

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSE GANDARA,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT
COURT OF THE DISTRICT OF ARIZONA.

FILED

JUN 25 1928

PAUL P. O'BRIEN,
CLERK



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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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OF RECORD.

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In the District Court of the United States for the
District of Arizona.

C.-3446.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSE GANDARA, ESTEBAN BORGARO, Jr.,
ANTONIO VALENZUELA, *alias* CHITO
VALENZUELA, and BISHOP NAVA-
RETTE,

Defendants.

INDICTMENT.

Vio. Section 37, Federal Penal Code of 1910. Con-
spiracy to Violate Section 13 of the Federal
Penal Code.

United States of America,
District of Arizona,—ss.

In the District Court of the United States, in

and for the District of Arizona, at the May term thereof, A. D. 1927.

The Grand Jurors of the United States, impaneled, sworn and charged at the term aforesaid, of the Court aforesaid, on their oath present, that JOSE GANDARA, ESTEBAN BORGARO, Jr., ANTONIO VALENZUELA, *alias* CHITO VALENZUELA, and BISHOP NAVARETTE, herein-after called the defendants, whose full and true names are, and the full name of each of whom is other than as herein stated to the Grand Jurors unknown, each late of the District of Arizona, heretofore, to wit, between the 1st day of May, A. D. 1927, and the 20th day of June, A. D. 1927, at a point near Tucson, Pima County, State and District aforesaid, the exact location of which is unknown to the Grand Jurors and within the jurisdiction of the United States and of this Honorable Court, did knowingly, willfully, unlawfully, feloniously and corruptly conspire, combine, confederate and agree together and with divers other persons, whose names are to the Grand Jurors unknown, to commit an offense against the United States of America, to wit, the offense of knowingly, wilfully, unlawfully and feloniously beginning, setting on foot and providing and preparing the means for a certain military enterprise to be carried on [1*] from the State of Arizona, within the United States of America, against the Territory of a certain foreign country, to wit, the Republic of Mexico, with whom the United States throughout said period of

*Page-number appearing at the foot of page of original certified Transcript of Record.

time were at peace, which said offense is defined by Section 13 of the Federal Penal Code, that is to say, at the time and place aforesaid, the said defendants did conspire to set on foot and provide and prepare the means for an enterprise, having for its objects the inciting of armed rebellion in the Republic of Mexico, of the citizens of said Republic of Mexico, against the Government and authority there, and the furnishing of arms, munitions, supplies and money for carrying on and supporting such rebellion, and an enterprise which was to be carried on from Tucson, Arizona, aforesaid, by the said defendants, devising the plan of the same there.

The said conspiracy, combination, confederation and agreement was continuously throughout all of the times in this indictment mentioned, in operation and existence.

OVERT ACT I.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to effect the object and purpose thereof, and on or about the 25th day of May, A. D. 1927, near Tucson, in the State and District aforesaid, the said defendants, JOSE GANDARA and BISHOP NAVARETTE, did meet with certain Yaqui Indians, and did urge said Yaqui Indians to band together and form a warlike enterprise and did urge, exhort and entice said Yaqui Indians to prepare to enter the said Republic of Mexico from the said State of Arizona under the leadership of the said JOSE GAN-

DARA and to make war upon the said Republic of Mexico.

OVERT ACT II.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to effect the object and purpose thereof, and on or about the 1st day of June, A. D. 1927, at Tucson, within said State and District aforesaid, the said JOSE GANDARA did arrange with the said ESTEBAN BOGARRO, Jr., to order for shipment to Tucson, Arizona, seventy-five 30-30 caliber Winchester [2] rifles for the use of said Yaqui Indians, for the purpose of using said rifles as aforesaid, in a revolutionary movement against the said Republic of Mexico.

OVERT ACT III.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of said conspiracy, and to effect the object and purpose thereof, the said ESTEBAN BORGARO, Jr., on or about the 6th day of June, A. D. 1927, at Tucson, in the State and District aforesaid, and within the jurisdiction of this Court, placed an order with Dunham, Carrigan & Hayden Company of San Francisco, California, for seventy-five 30-30 rifles to be shipped to Tucson, Arizona, by American Railway Express.

OVERT ACT IV.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to

effect the object and purpose thereof, the said ESTEBAN BORGARO, Jr., on or about the 9th day of June, A. D. 1927, at Tucson, in the State and District aforesaid, and within the jurisdiction of this Court, called at the office of the American Railway Express Company in Tucson, Arizona, and directed that said shipment of rifles be delivered to the store of the said ESTEBAN BORGARO, Jr., in the said city of Tucson, Arizona.

OVERT ACT V.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to effect the object and purpose thereof, the said ESTEBAN BORGARO, Jr., and the said ANTONIO VALENZUELA, *alias* CHITO VALENZUELA, carried and transported from the said store of the said ESTEBAN BORGARO, Jr., to a point outside of the city of Tucson, Arizona, twenty-five of the said 30-30 caliber rifles, which they caused to be secreted.

OVERT ACT VI.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to effect the object [3] and purpose thereof, the said JOSE GANDARA on or about the 9th day of June, A. D. 1927, at Tucson, in the State and District aforesaid, and within the jurisdiction of this Court, did transport and carry certain ammunition and cartridges, the exact number and description of which are to the Grand Jurors unknown, to a point

outside the city of Tucson, Arizona, the exact location of which is to the Grand Jurors unknown, where same were secreted and stored at his direction.

OVERT ACT VII.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of said conspiracy, and to effect the object and purpose thereof, the said JOSE GANDARA, on or about the 1st day of June, A. D. 1927, at Tucson, in the State and District aforesaid, and within the jurisdiction of this Court, did furnish, give and turn over to the said ANTONIO VALENZUELA, *alias* CHITO VALENZUELA, certain money with which to pay for the said above described 30-30 caliber Winchester rifles and did instruct said ANTONIO VALENZUELA, *alias* CHITO VALENZUELA to pay for said rifles and to deliver same to a point outside of Tucson, Arizona.

OVERT ACT VIII.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to effect the object and purpose thereof, the said JOSE GANDARA, did between the dates of May 1, and June 20, A. D. 1927, at Tucson, in the State and District aforesaid, and within the jurisdiction of this Court, deliver and caused to be delivered at a certain point outside the city of Tucson, the exact location of which is to the Grand Jurors unknown, divers other rifles, to wit: seven 30-30 Winchester

carbines, Model 1894 rifles; six long barrelled Mauser 7 m. m. rifles; 7 carbine Mauser 7 m. m. rifles; five 30-30 caliber Winchester octagon barrelled rifles and approximately four other rifles, the exact description of which is to the Grand Jurors unknown.

OVERT ACT IX.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present: [4]

That, in furtherance of said conspiracy, and to effect the object and purpose thereof, the said JOSE GANDARA, on or about the 17th day of June, A. D. 1927, at Tucson, within the State and District aforesaid, and within the jurisdiction of this Court, did procure and cause to be procured certain munitions of war, to wit, certain rifle cartridges of 30-30 caliber of 30-40 caliber and of 7 m. m. caliber, the exact number and description of which is to the Grand Jurors unknown, together with certain provisions and did furnish same to certain Yaqui Indians.

OVERT ACT X.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That, in furtherance of said conspiracy, and to effect the object and purpose thereof, the said JOSE GANDARA, between May 1, and June 20, A. D. 1927, the exact date being to the Grand Jurors unknown, at a certain point near Tucson, within said District of Arizona, did *arrange plan* with divers persons whose names are to the Grand Jurors unknown for the organization of certain

Yaqui Indians into an armed body and did then and there organize said Yaqui Indians into an armed body for the purpose of marching from the State of Arizona, within the United States of America, to the Republic of Mexico, with the intent then and there to make war upon the Government of the said Republic of Mexico, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

CLARENCE V. PERRIN,

Assistant United States Attorney for the District
of Arizona. [5]

Witnesses examined before Grand Jury:

John K. Wren.

Francisco Felix.

C. M. Orosco.

G. V. Hays.

W. E. Jones.

C. S. Farrar.

Antonio Molino.

A. T. Spence.

A true bill.

M. H. MANSFIELD,

Foreman.

Filed in open court this 9th day of September,
A. D. 1927. C. R. McFall, Clerk. [6]

[Title of Court and Cause.]

Honorable WILLIAM H. SAWTELLE, United States District Judge, Presiding.

MINUTES OF COURT—NOVEMBER 10, 1927—
ORDER SETTING CASE FOR TRIAL.

John B. Wright, Esq., United States Attorney, and C. V. Perrin, Esq., Assistant United States Attorney, appear for the Government, and James D. Barry, Esq., Geo. O. Hilzinger, Esq., and T. K. Richey, Esq., appear as counsel for the defendants in this case. It is by the Court ordered that this case be and it is set for arraignment, plea and trial on November 22, 1927, at 9:30 o'clock A. M. [7]

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 22, 1927—
TRIAL.

This case comes on regularly for trial this day. John B. Wright, Esq., United States Attorney, and C. V. Perrin, Esq., Assistant United States Attorney, appear as counsel for plaintiff. The defendant, Jose Gandara, is present in person, with his counsel, James D. Barry, Esq., and W. H. Fryer, Esq. The defendant, Esteban Borgaro, Jr., is present in person, with his counsel, T. K. Richey, Esq., and G. O. Hilzinger, Esq. The defendant, Juan Navarette, indicted as Bishop Navarette, is present in person, with his counsel, Messrs. James D. Barry, Frank E. Curley and Samuel L. Pattee.

Whereupon, each and all of said defendants waive arraignment and each of said defendants pleads not guilty, which pleas are now duly entered. The defendant indicted as Bishop Navarette, states that his true name is Juan Navarette, and it is thereupon by the Court ordered that further proceedings in this case as to the said defendant be had under his true name. All parties announce ready for trial.

Gertrude Mason is duly sworn to act as a Court reporter. A lawful jury of twelve men is thereupon duly empaneled and sworn to try this case. C. V. Perrin, Esq., Assistant United States Attorney, reads aloud the indictment to the jury and states the plea of not guilty of each defendant to the jury.

The defendants invoke the rule and the following witnesses are duly sworn and being duly admonished by the Court are excluded from the courtroom, to wit:

John K. Wren,	W. L. Conger,
B. F. Holliday,	C. M. Orosco,
W. E. Jones,	Lee Caldwell,
Dallas Ford,	Fred Ryan,
C. S. Farrar,	J. Curry,
Phillip G. Raymond,	A. R. Murchison,
P. D. Thornton,	Gabriel Miranda.

The following witnesses are duly sworn through a duly sworn Spanish Interpreter and being duly admonished by the Court are excluded from the courtroom, to wit:

Antonio Molino,	Jacinto Felix,
Francisco Felix,	Jesus Rivera,
Juan Alvarez,	Juana Mendoza,

Christiano Armento,	Faustina Olivas,
Jose Esteban Rivera,	Jose Juan Sanchez,
Antonio Coupez, <i>alias</i> Alvarez,	Matilde de Baltazar,
Francisco Valenzuela,	Jesus Valenzuela.

GOVERNMENT'S CASE.

The following witnesses, heretofore duly sworn, are called and examined as follows: John K. Wren, and after examination, is excepted from the rule; Antonio Molino and Francisco Felix.

And thereupon the further trial of this case is ORDERED continued to 9:30 o'clock A. M. on November 23, 1927, to which time, the jury, being first duly admonished by the Court, the parties and counsel are excused. [8]

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 23, 1927—
TRIAL (CONTINUED).

The jury and all members thereof, the defendants, and all counsel, are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE (Continued).

The examination of witness, Francisco Felix, is resumed and concluded. Guadalupe Flores is now duly sworn and examined through a sworn inter-

preter. The following witnesses, heretofore sworn, are now called and examined, to wit:

W. L. Conger.

B. F. Halliday.

C. M. Orosco.

W. E. Jones.

John J. Farrell is now duly sworn and examined. Fred Ryan, heretofore sworn, is now called and examined. A. E. Brown is now duly sworn and examined as a witness.

Plaintiff's Exhibits, "A," "L," "M," "N," and "O" (all being documentary evidence), and "F," "G," "H," "I," "J," and "K" (being a lot of guns, ammunition, etc.) are now admitted in evidence.

And thereupon the further trial of this case is ORDERED continued to 9:30 A. M., November 25, 1927, to which time the jury, being first admonished by the Court, the parties and counsel are excused.

[9]

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 25, 1927—
TRIAL (CONTINUED).

C. V. Perrin, Esq., Assistant United States Attorney, appears as counsel for the United States, and the jury, and all members thereof, the defendants and all counsel, are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE (Continued).

The following Government witnesses, heretofore sworn, are called and examined, to wit:

C. S. Farrar,

Joe Curry,

Jose Esteban Rivera, through duly sworn interpreter.

Jesus Rivera, through duly sworn interpreter.

Faustina Olivas, through duly sworn interpreter.

Jose Juan Sanchez, through duly sworn interpreter.

Jacinta Felix, through duly sworn interpreter.

G. V. Hayes is now called, sworn and examined as a witness for the Government, and John K. Wren is recalled for further examination on behalf of the Government.

Whereupon, it is by the Court ordered that the jury in this case be, and they are, excused until Tuesday, November 29, 1927, at 9:30 o'clock A. M., and **IT IS FURTHER ORDERED** that detained witnesses herein, to wit: Francisco Valenzuela and Jesus Valenzuela and Antonio Kupez, be discharged from custody and paid the lawful fees for the period of their detention.

Whereupon, the further trial of this case is **ORDERED** continued to 9:30 o'clock A. M., on November 26, 1927, to which time the parties and all counsel are excused. [10]

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 26, 1927—
TRIAL (CONTINUED).

C. V. Perrin, Esq., Assistant United States Attorney, and Carl R. Tisor, Esq., Assistant United States Attorney, appear as counsel for the Government. The defendants and all counsel are present pursuant to recess and further proceedings of trial are had in the absence of the jury, as follows:

Each and all of the defendants, Jose Gandara, Esteban Borgaro, Jr., and Juan Navarette, move the Court to direct a verdict of not guilty, as to each and all of the defendants.

The said motions are argued by respective counsel and by the Court taken under advisement, and the further trial of this case is ORDERED continued to 9:30 o'clock A. M. on November 29, 1927, to which time the parties and counsel are excused.
[11]

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 29, 1927—
TRIAL (CONTINUED).

C. V. Perrin, Esq., Assistant United States Attorney, appears as counsel for the Government. The jury and all members thereof, the defendants and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE (Continued).

The examination of John K. Wren is resumed and concluded, and

The Government rests.

The defendants each and all renew their motions for a directed verdict of not guilty. Whereupon, it is by the Court ordered that said motion of the defendant, Juan Navarette, be, and the same is, sustained; that the motion of the defendant, Jose Gandara, be, and it is, overruled, to which ruling the said defendant excepts; that the motion of the defendant, Esteban Borgaro, Jr., be and it is overruled, to which ruling the said defendant excepts.

CASE OF DEFENDANTS JOSE GANDARA
AND ESTEBAN BORGARO, JR.

The defendant, Jose F. Gandara, is sworn and examined, and the defendant, Esteban Borgaro, Jr., is sworn and examined, and the said defendants rest.

REBUTTAL.

John J. Farrell, heretofore sworn, is recalled for further examination. And

The Government rests.

The defendants rest.

The defendants, Jose F. Gandara and Esteban Borgaro, Jr., each renew their motions for a directed verdict of not guilty, which said motions are overruled, to which ruling each of said defendants excepts.

And thereupon the further trial of this case is ORDERED continued to 9:30 A. M. on November 30, 1927, to which time, the jury, being first duly admonished by the Court, the parties and counsel are excused.

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 30, 1927—
TRIAL (CONTINUED).

C. V. Perrin, Esq., Assistant United States Attorney, appears as counsel for the Government. The jury and all members thereof, the defendant and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

GOVERNMENT'S CASE (Continued).

The examination of John K. Wren is resumed and concluded, and

The Government rests.

REBUTTAL.

John J. Farrell, heretofore sworn, is recalled for further examination. And

The Government rests.

The defendants rest.

The defendants, Jose F. Gandara and Esteban Borgaro, Jr., each renew their motions for a directed verdict of not guilty, which said motions are overruled, to which ruling each of said defendants excepts.

And thereupon the further trial of this case is ORDERED continued to 9:30 A. M. on November 30, 1927, to which time, the jury, being first duly admonished by the Court, the parties and counsel are excused. [12]

[Title of Court and Cause.]

MINUTES OF COURT—NOVEMBER 30, 1927—
TRIAL (CONTINUED).

C. V. Perrin, Esq., Assistant United States Attorney, appears as counsel for the United States. The jury and all members thereof, the defendants, Jose Gandara and Esteban Borgaro, Jr., and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

All evidence being in, the case is argued by respective counsel to the jury, and for the Court duly instructs the jury, and said jury retire in charge of their bailiffs, officers of this Court first duly sworn for that purpose, to consider of their verdict.

It is by the Court ordered that the marshal provide meals and lodging for the jury and bailiffs at the expense of the United States, until such time as they are discharged in this case. [13]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 1, 1927—
TRIAL (CONTINUED).

C. V. Perrin, Esq., Assistant United States Attorney, appears as counsel for the United States. The defendants, Jose Gandara and Esteban Borgaro, Jr., and all counsel aforesaid, are present pursuant to recess and further proceedings of trial are had as follows:

At 10:30 o'clock A. M., the jury return into court, all members present, and pursuant to the Court's instructions, return the following verdict as to the defendant, Juan Navarette:

C.—3446.

“UNITED STATES OF AMERICA,
Plaintiff,
Against
JUAN NAVARETTE, Indicted as BISHOP NAV-
ARETTE,
Defendant.

VERDICT.

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant NOT GUILTY.

CHARLES M. McKEAN,
Foreman.”

And through their foreman report they have agreed upon a verdict as to defendant, Jose Gandara, and present the following verdict, to wit:

C.—3446.

“UNITED STATES OF AMERICA,

Plaintiff,

Against

JOSE GANDARA,

Defendant.

VERDICT.

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant GUILTY in manner and form as charged in the indictment.

CHARLES M. McKEAN,
Foreman.”

And further report that they have been unable to agree upon a verdict as to the defendant, Esteban Borgaro, Jr.

The above verdicts are read and recorded, and the defendant, Jose Gandara, is by the Court ordered committed to the county jail of Pima County, Arizona, to await sentence, and it is FURTHER ORDERED that the defendant, Juan Navarette be discharged to go hence without day, and

IT IS FURTHER ORDERED that the jury shall further deliberate as to the defendant, Esteban Borgaro, Jr.

At 2:00 o'clock P. M., the defendant, Esteban Borgaro, Jr., and his counsel aforesaid being pres-

ent, and C. V. Perrin, Esq., Assistant United States Attorney, appearing for the United States, the jury return into court and upon the request of the jury, counsel for the United States consenting, and counsel for the defendant, Esteban Borgaro, Jr., also consenting thereto, it is by the Court ordered that the marshal take the jury to view certain premises in question in this case, and thereafter, that the jury return to their room in charge of their bailiff to resume deliberation as to said defendant's case.

Subsequently, at 5:15 o'clock P. M., the defendant, Esteban Borgaro, Jr., and his counsel being present, the jury return into court and [14] report they are unable to agree upon a verdict.

It is thereupon by the Court ordered that the said jury be discharged from the further consideration of this case and a mistrial entered as to said defendant, Esteban Borgaro, Jr., said defendant to go on his present bond until the further order of the Court.

It is FURTHER ORDERED that the United States marshal take and safely keep and store in a convenient place, all arms, ammunition, etc., seized in this case and introduced in evidence, until the further order of the Court. [15]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 2, 1927—
JUDGMENT.

C. V. Perrin, Esq., Assistant United States Attorney, appears for the Government. The defendant,

Jose Gandara, is present in person with his counsel, Messrs. W. H. Fryer and James D. Barry, and is now duly informed by the Court of the nature of the crime charged in the Indictment herein, to wit: Unlawfully and feloniously and corruptly conspiring, combining, confederating and agreeing together with divers other persons whose names are unknown, to commit an offense against the United States of America, to wit: the offense of unlawfully and feloniously beginning, setting on foot and providing and preparing the means for a military enterprise against the Republic of Mexico; and furnishing of arms, munitions, supplies and money for the carrying on and supporting of armed rebellion in the said Republic of Mexico, of the citizens of said Republic against the government and authority there, committed between the first day of May, 1927, and the 20th day of June, 1927, in violation of Section 37 of the Federal Penal Code of 1910; and in conspiracy to violate Section 13 of the Federal Penal Code; of his arraignment on said charge and of his plea of not guilty thereto, and of his trial and conviction thereof by jury.

And no legal cause appearing why judgment should not now be imposed, the Court renders judgment as follows:

That the said defendant having been duly convicted of said crime, the Court now finds him guilty thereof, and as a punishment therefor, does now

ORDER, ADJUDGE AND DECREE that said defendant, Jose Gandara, be imprisoned in the United States Penitentiary at McNeil Island,

Washington, for the period of two years, to date from the date of his delivery to the warden of the said penitentiary; and fined the sum of One Thousand Dollars (\$1,000.00), and that he stand committed to the said penitentiary until the said fine is paid or he is otherwise discharged by law, said commitment in default of the payment of said fine [16] to date from the expiration of the prison sentences herein imposed upon said defendant.

Upon request of said defendant, IT IS FURTHER ORDERED that said defendant be detained in the county jail of Pima County, Arizona, until the said defendant can give bail upon a writ of error, or until the further order of the Court. [17]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 3, 1927—
EXAMINATION OF BOND.

On motion of James D. Barry, Esq., counsel for the defendant, Jose F. Gandara, it is by the Court ordered that the bond of Jose F. Gandara, for appearance for trial before this Court, in this case, executed August 5, 1927, in the sum of Five Thousand Dollars (\$5,000.00), with J. C. Etchels and Leonardo Moreno as sureties, be and the same is hereby exonerated and discharged. [18]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 3, 1927—
ORDER ALLOWING PETITION FOR
WRIT OF ERROR.

It is by the Court ordered that the petition of the defendant, Jose Gandara, for a writ of error to the Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby allowed. [19]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 10, 1927—
ORDER APPROVING AND ACCEPTING
BOND.

It appearing to the Court that the defendant, Jose Gandara, has tendered bond for costs on writ of error in this case to the Circuit Court of Appeals for the Ninth Circuit, in the sum of Two Hundred and Fifty Dollars (\$250.00), it is by the Court ordered that the said bond be and the same is approved and accepted. [20]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 10, 1927—
ORDER ACCEPTING BOND FOR AP-
PEARANCE AND RELEASING DEFEND-
ANT FROM CUSTODY.

The defendant, Jose Gandara, now tenders his

bond for appearance and for the payment of the fine imposed by the judgment herein pursuant to the Writ of error allowed and issued in this cause, said bond being executed on the 9th day of December, A. D. 1927, with the Union Indemnity Company, a corporation of New Orleans, Louisiana, as surety thereon in the sum of Ten Thousand Dollars (\$10,000.00) and the Court having examined same, does now ORDER that the said bond be and it is hereby accepted and approved and it is

FURTHER ORDERED that the defendant aforesaid be released from custody upon said bond.
[21]

[Title of Court and Cause.]

MINUTES OF COURT—DECEMBER 16, 1927—
ORDER EXTENDING TIME TO AND INCLUDING JANUARY 14, 1928, TO FILE BILL OF EXCEPTIONS.

It appearing by the stipulation attached hereto, dated December 16, 1927, signed by the attorneys for the respective parties, that the consent of the plaintiff has been obtained for the entrance of this order,—

IT IS HEREBY ORDERED that the time in which the defendant may file his bill of exceptions in the above-entitled cause is extended to and including the 14th day of January, 1928.

Dated Tucson, Arizona, December 16, 1927.

WM. H. SAWTELLE,
United States District Judge. [22]

[Title of Court and Cause.]

MINUTES OF COURT—JANUARY 14, 1928—
ORDER EXTENDING TIME TO AND IN-
CLUDING FEBRUARY 13, 1928, TO FILE
BILL OF EXCEPTIONS.

It appearing by the stipulation attached hereto, dated January 14, 1928, signed by the attorneys for the respective parties, that the consent of the plaintiff has been obtained for the entrance of this order,—

IT IS HEREBY ORDERED that the time in which the defendant may file his bill of exceptions in the above-entitled cause is extended to and including the 13th day of February, 1928.

Dated Tucson, Arizona, January 14, 1928.

WM. H. SAWTELLE,
United States District Judge. [23]

[Title of Court and Cause.]

MINUTES OF COURT—FEBRUARY 11, 1928—
ORDER EXTENDING TIME THIRTY
DAYS TO PREPARE, TENDER AND SET-
TLE BILL OF EXCEPTIONS.

For good cause shown, it is ordered that the defendant Jose Gandara be and he is hereby allowed thirty days additional to the time heretofore allowed within which to prepare, tender and settle his bill of exceptions herein. [24]

[Title of Court and Cause.]

MINUTES OF COURT—FEBRUARY 28, 1928—
ORDER OF DISMISSAL.

On motion of Carl R. Tisor, Esquire, Assistant United States Attorney, it is by the Court ordered that this case be and it hereby is dismissed as to the defendants Esteban Borgaro, Jr., and Antonio Valenzuela, *alias* Chito Valenzuela, and said defendants' bonds exonerated. [25]

[Title of Court and Cause.]

MINUTES OF COURT—MARCH 12, 1928—
ORDER EXTENDING TIME THIRTY
DAYS TO PROPOSE AMENDMENTS TO
BILL OF EXCEPTIONS.

On motion of C. V. Perrin, Esquire, Assistant United States Attorney, it is by the Court ordered that the plaintiff herein be allowed thirty days from this date within which to propose amendments to the defendant's proposed bill of exceptions herein. [26]

[Title of Court and Cause.]

MINUTES OF COURT—APRIL 9, 1928—OR-
DER EXTENDING TIME THIRTY DAYS
TO PROPOSE AMENDMENTS TO BILL
OF EXCEPTIONS.

On motion of C. V. Perrin, Esquire, Assistant United States Attorney, it is by the Court ordered

that the plaintiff herein be and is hereby allowed thirty days in addition to the time heretofore allowed in which to propose amendments to the bill of exceptions herein; and it is further ordered that the time within which said bill may be settled be and it is extended for said period. [27]

[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR.

To the Honorable District Court:

Now comes Jose Gandara, the defendant herein, by his attorneys, James D. Barry and W. H. Fryer, and says that on the 1st day of December, A. D. 1927, during the regular term of said court, he was convicted, a verdict of guilty being rendered against him in the above styled and numbered cause, and a judgment was rendered thereon on the 2d day of December, A. D. 1927, on which date sentence was pronounced against him, as appears of record, and that in the said judgment and in the proceedings had prior thereto, upon the trial of this cause, errors were committed, to the prejudice of this defendant, all of which will more fully appear from the assignment of errors filed with this petition.

WHEREFORE, said defendant, Jose Gandara, respectfully prays that a writ of error be allowed in this behalf out of the Honorable United States Circuit Court of Appeals for the Ninth Circuit, for the correction and revision of the errors so complained of, and that a transcript of the record of

proceedings and papers in this cause, duly authenticated, be sent to the Honorable the Circuit Court of Appeals for the Ninth Circuit, for the correction and revision of said errors, and that upon the hearing of this cause before the said Circuit Court of Appeals it be reversed, as to the defendant Jose Gandara, and that such other and further orders, judgments, and [28] decrees be made and entered therein as shall be deemed just in the premises.

Respectfully submitted,

JOSE GANDARA,

Said Defendant.

JAMES D. BARRY,

W. H. FRYER,

Attorneys for Said Defendant.

Writ of error allowed upon the foregoing petition this 3 day of December, A. D. 1927.

WM. H. SAWTELLE,

U. S. District Judge.

[Indorsements]: Filed Dec. 3, 1927. [29]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

The above-named defendant, Jose Gandara, by his attorneys, in connection with his petition for writ of error, makes the following assignments of error, which he alleges occurred in the trial of said cause:

1. Because the Court erred in overruling the

defendant's exception to the Court's charge for its failure to charge the jury upon the defendant's theory of defense that if a military enterprise or expedition had been begun or set on foot in Mexico, and the acts alleged to have been done by the defendant were done in a conspiracy in connection with such an expedition, then he should be acquitted.

2. Because the Court erred in refusing to give to the jury defendant's special requested instruction No. 1, submitting defendant's theory of defense to the effect that if the jury believed that a military expedition had been already begun or set on foot in Mexico and the members thereof had come to the United States for ammunition and supplies with the purpose and intention to return to Mexico, and that the defendant conspired to furnish arms and ammunition to such expedition, he would not be guilty of an offense under the charge as laid in the indictment, said requested instruction reading as follows

“Gentlemen of the Jury:

“The jury are instructed, if prior to the commission of any of the acts charged in the indictment, a revolution or revolt of the Yaqui Indians was in existence in the Republic of Mexico in which armed forces of the said Indians were in conflict with the military [30] forces of the Mexican government, and if members of such armed forces of the Yaqui Indians came to the United States for the purpose of securing munitions of war and provisions, and then returning to rejoin the forces of such Indians

in Mexico, and the defendant Gandara furnished ammunition or provisions only for such Indians as had come from Mexico, and intended to return to Mexico, and not to recruit or secure other Indians to go to Mexico, then such furnishing of ammunition and provisions would not constitute either a military enterprise or a military expedition as those terms are used in the statute of the United States on which this prosecution is based, and the defendant, Gandara, would not be guilty of beginning, setting on foot, or furnishing means for any military expedition or military enterprise, and a conspiracy merely to furnish ammunition and provisions to Yaqui Indians who had come from Mexico and were intending to return to Mexico under the circumstances above mentioned, would not be an offense against the United States.”

Which special requested instruction was refused by the Court, to which action the defendant then and there excepted, and said requested instruction was marked refused and ordered filed.

WHEREFORE, defendant prays that on account of said errors he have a reversal of the Judgment of the Court.

JAMES D. BARRY,
W. H. FRYER,
Attorneys for Defendant.

[Indorsements]: Filed Dec. 3, 1927. [31]

ORDER FIXING AMOUNT OF BAIL BOND
AND BOND FOR THE PAYMENT OF THE
FINE ASSESSED BY THE COURT.

It appearing to the Court that a writ of error has been sued out in this case by the defendant, Jose Gandara, returnable to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment made and entered by this Court on the 2d day of December, A. D. 1927;

And it appearing that the United States Attorney has no objection, it is therefore ordered and decreed that the defendant, Jose Gandara, be admitted to bail pending said writ of error; that the said defendant, Jose Gandara, be so admitted to bail in the sum of Ten Thousand Dollars (\$10,000.00), conditioned as required by law and the rules and orders of this Court; and that upon the filing of said bond, which shall contain a provision for the payment of the fine assessed against the defendant if the judgment of this Court is affirmed, stay of execution is hereby granted pending the determination of this said writ of error, said bond to be approved by this Court.

Done in open court this 3d day of December, 1927.

WM. H. SAWTELLE,
United States District Judge.

[Indorsements]: Filed Dec. 3, 1927. [32]

[Title of Court and Cause.]

Hon. WILLIAM H. SAWTELLE, Judge.

ORDER FIXING AMOUNT OF COST BOND.

It is ordered by the Court that the cost bond in this cause to be executed by and on behalf of the defendant, Jose Gandara, be and the same is hereby fixed at the sum of Two Hundred and Fifty Dollars.

WM. H. SAWTELLE,
United States District Judge.

[Indorsements]: Filed Dec. 3, 1927. [33]

COST BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, Jose Gandara, as principal, and Union Indemnity Company, a corporation organized and existing under the laws of the State of Louisiana, and having its principal office at New Orleans, La., as surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the United States of America, to which payment well and truly to be made we and each of us bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 9th day of December, in the year of our Lord, one thousand nine hundred and twenty-seven.

WHEREAS, at the regular November Term, 1927, of the United States District Court for the District of Arizona, sitting at Tucson, Arizona, in a cause pending in the said court, wherein the United States of America was plaintiff and Jose Gandara was defendant, and numbered C.—3446 on the criminal docket of said Court a verdict of guilty was rendered against the said Jose Gandara and judgment and sentence were pronounced thereon on the 2d day of December, A. D. 1927, and the said Jose Gandara has obtained a writ of error allowed in open court to the United States Circuit Court of Appeals for the Ninth Circuit, for the revision of alleged errors and to reverse the judgment in said cause, and has filed his application for writ of error and assignment of errors in the office of the Clerk of said court to reverse the judgment in the above styled and numbered cause, and has procured the issuance of a citation directed to the United States of America, citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California, within thirty days from the date thereof.

NOW, THEREFORE, the condition of the above obligation is such that if the said Jose Gandara shall prosecute said writ of error to [34] effect and answer all damages and costs if he may fail to make this plea good, then the above obligation to be void; else to remain in full force and effect.

JOSE GANDARA, (Seal)
Principal.

UNION INDEMNITY COMPANY, a Corporation. (Seal)

By FRANK A. PEYTON, (Seal)
Its Attorney-in-fact.

Witness:

JAMES D. BARRY.

Approved this 10 day of December A. D., 1927.

WM. H. SAWTELLE,
United States District Judge.

[Indorsements]: Filed Dec. 10, 1927. [35]

BOND FOR APPEARANCE.

KNOW ALL MEN BY THESE PRESENTS: That we, Jose Gandara, as principal, and Union Indemnity Company, a corporation organized and existing under the laws of the State of Louisiana, and *and* having its principal office at New Orleans, La., as surety, are held and firmly bound unto the United States of America in the full and just sum of Ten Thousand (\$10,000.00) Dollars, to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of December, in the year of our Lord, one thousand nine hundred and twenty-seven.

WHEREAS, lately at the November Term, A. D. 1927, of the District Court of the United States for the District of Arizona, in a suit pending in said

court, between the United States of America, plaintiff, and Jose Gandara, defendant, a judgment and sentence was rendered against the said Jose Gandara and the said Jose Gandara has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, thirty days from and after the date of said citation, which citation has been duly served.

NOW, the condition of the above obligation is such that if the said Jose Gandara shall appear in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his writ of error, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed or the writ of error [36] or appeal is dismissed, and further, if said judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed, he shall pay in full the fine of One Thousand Dollars (\$1,000.00) assessed against him; and if he shall appear for trial in the

United States Court for the District of Arizona, at Tucson, Arizona, on such day or days as may be appointed for a retrial by said District Court, and abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, else to remain in full force, virtue and effect.

JOSE GANDARA, (Seal)

UNION INDEMNITY COMPANY, a Corporation. (Seal)

By FRANK A. PEYTON, (Seal)

Its Attorney-in-fact.

Witness:

JAMES D. BARRY.

Approved: Dec. 10, 1927.

WM. H. SAWTELLE,

Judge of the United States District Court for the District of Arizona.

[Indorsements]: Filed Dec. 10, 1927. [37]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 14, 1928, TO FILE BILL OF EXCEPTIONS.

It is hereby stipulated and agreed that the defendant's time in which to file his proposed bill of exceptions in the above-entitled cause be, and the

same hereby is, extended to and including the 14th day of January, 1928.

It is further stipulated and agreed that an order to this effect may be entered herein without further notice to the parties and that defendant have the same right to file said bill of exceptions within the time stated with the same force and effect as though said matter had been done and performed heretofore.

Dated December 16, 1927.

CLARENCE V. PERRIN,
Assistant United States District Attorney.
JAMES D. BARRY,
W. H. FRYER,
Attorneys for Defendant.

[Indorsements]: Filed Dec. 16, 1927. [38]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND
INCLUDING FEBRUARY 13, 1928, TO
FILE BILL OF EXCEPTIONS.

It is hereby stipulated and agreed that the defendant's time in which to file his proposed bill of exceptions in the above entitled cause be, and the same hereby is, extended to and including the 13th day of February, 1928.

It is further stipulated and agreed that an order to this effect may be entered herein without further notice to the parties and that defendant have the same right to file said bill of exceptions within

the time stated with the same force and effect as though said matter had been done and performed heretofore.

Dated January 14, 1928.

United States District Attorney.
JAMES D. BARRY,
W. H. FRYER,
Attorneys for Defendant.

[Indorsements]: Filed Jan. 14, 1928. [39]

[Title of Court and Cause.]

DEFENDANT'S REQUESTED INSTRUCTION
TO THE JURY No. 1.

(1) The jury are instructed, if prior to the commission of any of the acts charged in the indictment, a revolution or revolt of the Yaqui Indians was in existence in the Republic of Mexico in which armed forces of the said Indians were in conflict with the military forces of the Mexican Government, and if members of such armed forces of the Yaqui Indians came to the United States for the purpose of securing munitions of war and provisions, and then returning to rejoin the forces of such Indians in Mexico, and the defendant Gandara furnished ammunition or provisions only for such Indians as had come from Mexico, and intended to return to Mexico, and not to recruit or secure other Indians to go to Mexico, then such furnishings of ammunition and provisions would not constitute

either a military enterprise or a military expedition as those terms are used in the statute of the United States on which this prosecution is based, and the defendant Gandara would not be guilty of beginning, setting on foot, or furnishing means for any military expedition or military enterprise, and a conspiracy merely to furnish ammunition and provisions to Yaqui Indians who had come from Mexico and were intending to return to Mexico under the circumstances above mentioned, would not be an offense against the United States.

[Indorsements]: Filed Nov. 30, 1927. [40]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 22d day of November, 1927, at a regular and stated term of the United States Court for the District of Arizona, before the Honorable William H. Sawtelle, Judge of the above-entitled court, the issues joined in said cause came on to be tried by said Judge and a jury impanelled and sworn to try the issues in said cause.

The Government was represented by John B. Wright, United States Attorney, and Clarence V. Perrin, Assistant United States Attorney, and the defendant, being present in person, was represented by W. H. Fryer and James D. Barry, his attorneys.

The indictment being read to the jury by counsel for the Government and a plea of not guilty thereto having previously been entered by the defendant,

thereupon the following further proceedings were had herein, to wit:

TESTIMONY OF JOHN K. WRENN, FOR THE
GOVERNMENT.

JOHN K. WRENN was called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

Direct Examination.

My name is John K. Wrenn, and I am a special agent of the Department of Justice, and have been so engaged about ten years, and was engaged in that capacity during the months of May and June of this year. [41—1]

I know Esteban Borgaro and Jose Gandara, but I do not know Juan Navarette. I have been acquainted with Borgaro since about June 9th, when I met him at his store on Meyer Street, this city. Before June 9th, we had received information from the Los Angeles office of the Bureau of Investigation, and acting on that information I came from El Paso to Tucson and shortly after my arrival, I saw eight cases of guns down at the Southern Pacific Depot being unloaded from an express-car on to an express truck, and I inspected the cases and saw that they were guns, the same being marked "Winchester," and on top of the boxes was the San Francisco firm name, something like Hayden & Company. The boxes were addressed to this Company, and on the boxes was also, "Notify E. Borgaro, Jr., Tucson, Arizona."

(Testimony of John K. Wrenn.)

That was about between eight and ten o'clock in the morning when I saw the guns on the truck. At that time I had Mr. Caldwell, Border Patrol Inspector, with me and he assisted me, and before the cases were unloaded from the express-car, Mr. Borgara came up close by us and walked by the express-car. I didn't know his name at that time. I later identified him as the defendant here. Then he went away [42—2] and came back and was around the platform, and about that time the guns were put on the truck by the express employee and he started to the express office, and Mr. Borgaro walked by and stopped near the express truck. Then I knew I had to watch these particular guns and Mr. Caldwell and I were still together and we saw Mr. Borgaro go away and then, later, return in a car. His return was not very long after he had been there before—probably half an hour. He went away, came back and went into the express office, and then came out and went away. I went into the express office and talked to Mr. Oroseo, one of the clerks there, and to Mr. Jones, the delivery man, who, I think, was the man that unloaded the rifles from the express-car on to the truck and took the cases of rifles to the express office or warehouse; later, Mr. Jones loaded the rifles on to the express wagon and left. He was driver for the Express Company. He left in his wagon and went down the street and then turned to the left and later, drove to a side door of Mr. Borgaro's store; I was there when he got there and I saw that. I was there

(Testimony of John K. Wrenn.)

when he drove up, and this driver, with the assistance of some of the men, delivered the eight cases of guns inside of the store. That's all I saw at that time—that the rifles were delivered to Mr. Borgaro's place of business, which is located on Broadway & Meyer Streets in Tucson—41 Meyer Street, I believe.

In the evening later, I talked to Mr. Borgaro about the rifles. I didn't see anything more of him until then. This was the first conversation I had with him regarding the guns, and he made a free and voluntary statement to me at that time. I left Mr. Borgaro's place in the morning, after delivery of the guns was made by the express driver. I saw eight cases of guns delivered to his store. I came back to the store later to look at the guns that were in his store, and all the cases were there, but several of them had been opened and the guns were not there. This was the same day the delivery was made. The empty cases that I saw at his store were some of the same cases that I had seen unloaded to the truck at the depot platform. The guns from these particular cases were gone—some of them were there [43—3] and some were gone. The empty wooden boxes were in the store, and I observed the mark on those boxes and identified them as being the same cases I had previously seen at the depot.

Acting on information I received, I went to Mr. Borgaro's store and part of the guns were gone, as I said before. I talked to Mr. Borgaro, and after

(Testimony of John K. Wrenn.)

that I found some of the guns had been taken away and I talked to Mr. Borgaro; I made efforts to locate the lost guns. I was with Mr. Caldwell and Mr. Farrell and Mr. Borgaro, and Mr. Borgaro took us to a place out by an arroyo, close to what is called Millville.

I went back to the store in the evening; that is, I got out and went in and when I went in I asked if Mr. Borgaro was there and they said, "No." There was a lady there who spoke and said that he had taken the children, or some young folks, to dinner. Well, I returned in the evening and Mr. Borgaro was there. I asked Mr. Borgaro if he had received the shipment of eight cases of guns, and he said, "Yes, sir." I said, "Where are the guns?" He says, "Why, they are all there in the cases," and we found part of the cases—some of the cases had been opened and the guns, part of the guns were gone. I said, "Mr. Borgaro, what became of the guns, the balance of these guns?" He says, "Well, some of them were sold here, sold them right here." I said, "Well, now, here is a man"—pointing to Mr. Farrell—"who saw you take, with another man, some of the guns away in a car," I said. Well, and then I said further, "All I want to know is what became of the guns, who received the guns, and if you turned them over to any persons who were not entitled to them," and after some parley he said, "Well, I delivered them to a house." I said, "Well, would you mind showing us the house?" and he said, "Well, all right," and we got into a car, Mr.

(Testimony of John K. Wrenn.)

Caldwell, Mr. Borgaro, Mr. Farrell and myself, and drove out, we will say, south of town, and after some short distance he said, "Well, I didn't deliver them to a house,—the guns—I took them out here some distance, across the tracks, near a place called Millville." And I said, "Of course you will take me to that place?" and he said he would and we got out in an arroyo, out, I will [44—4] say, in that direction (indicating) from Millville, and he says, "Here in this arroyo is where I delivered the guns with this other man." I asked him, "Do you know the other man? Do you know his name, the man who was with you at the time of delivery?" He said, "Well, I don't know him." I said, "Who did you deliver the guns to?" "I don't know; there was about eight or twelve men in the truck and I delivered them at this spot, at the arroyo here, along about—sometime before you came to the store." Well, before going out there, we talked the matter over with reference to the guns, how many he sold, and he said, "Well, out of that shipment I delivered to the parties"—he didn't know their names, he delivered twenty-five, thirty-five rifles out of this particular shipment; that four more guns belonging to him, that he had sold out of his store, to someone he did not know who; that some time previous to the date of this delivery a man came to his place, a Mexican—he didn't know his name—and told him that he wished to buy a number of guns, and that this man was with another man, and the party who ordered the guns and said

(Testimony of John K. Wrenn.)

he would take the guns up to seventy-five or a hundred, told him that he would take them if he could get them, and that the man who ordered the guns designated the man who was with him when he ordered the guns as the man to receive the guns when they were delivered by Mr. Borgaro or given to him by Mr. Borgaro; and some two days before the guns came from San Francisco, the place where he said he ordered them from the party or the agent, or man designated by the purchaser to receive the guns from Mr. Borgaro, came on several occasions and insisted on the immediate delivery of the guns; that when the guns came, or about on the same day that the guns came from Frisco,—the day that he delivered the twenty-five to the twelve men or eight men in the truck—previous to his delivery, that this agent of the purchaser had come, insisting upon the delivery of them. That this man's coming there and insisting on the delivery of the guns, he said that he became kind of uneasy about it and figured that probably there was something wrong and the guns might be for fighting purposes. He stated further, at one time, that he had his money tied up into the purchase of the [45—5] arms, that he had been to the Southern Arizona Bank & Trust Company and had made arrangements for the payment of these guns and that he had ordered the guns from a man by the name of Mr. Conger, who was said to be—whom he thought to be or was said to be an agent or salesman for the company from whom the guns were purchased; that the fellow, the

(Testimony of John K. Wrenn.)

agent of the purchaser of the guns, at that time he delivered, insisted upon delivery of them, that he had his money tied up into it to a certain extent by borrowing from the bank to pay for the guns, and the fellow insisted upon delivery outside of the store, and he thought, well, it was best to deliver them; that he did deliver them, the twenty-five guns, out of the shipment, and when he reached the spot, out at this place—the arroyo near Millville,—he realized then again, or further, that the guns were for revolutionary purposes.

Borgaro said he ordered the guns from a salesman, who I later learned was Mr. Conger, the salesman for this particular company in San Francisco. Borgaro said that he asked this salesman, “Well, what about the embargo on arms and ammunition?” and he said the salesman advised him that he didn’t believe there was an embargo on ammunition; that he could sell these guns one or two at a time by delivery at the store, or delivering *bona fide* sales. As to whether he stated what embargo he meant, we discussed the situation in Mexico and the embargo on ammunition, and I told him that the embargo on ammunition was still in effect, and I inferred that he meant the same thing.

I had another conversation with Borgaro at his store on the same day, and Mr. Caldwell was present. Mr. Borgaro, during our conversation, said the party or parties purchasing the guns had said that they would take some twenty or twenty-five thousand rounds of 30-30 cartridges and presumed

(Testimony of John K. Wrenn.)

they would go with the guns, and that he had ordered, or had coming, twenty or twenty-three or four thousand rounds of 30-30 cartridges.

As I said before, the guns were gone when we got out to see the arroyo, so there was no guns there, and I could not see any signs where a delivery had been made—no signs of a truck or footprints [46—6] around in the sand there. Borgaro had stated to me the manner in which the guns had been delivered by him. He said that he put them in his car and that this party, whose name he did not know, went with him and they went out to the arroyo and when they reached there, the truck was in the arroyo and the parties got out of the truck, with the man who was in his car with him, and took the guns out of his car and put them into the truck, and that he went on and left the truck there and didn't see them any more.

I looked very closely out there, and I wanted to give Mr. Borgaro the best of it, and I couldn't find where there had been any tracks of persons there, or of twelve men, or of any men. I didn't find any sign there. The country there was a kind of a sandy desert country with greasewood around in a small arroyo there, and the wagon road crossing the arroyo and running in a kind of north and south direction. Mr. Caldwell and Mr. Farrell were with me at the time—and Mr. Borgaro also—and we examined the ground very carefully. I didn't see Borgaro any more until the next day. When the ammunition came, I went up and looked at it.

(Testimony of John K. Wrenn.)

It was twenty-three thousand rounds of cartridges that he said had come from El Paso which had been shipped to him. At that time I had a conversation with him and as to who was present—Mr. Caldwell was there on several occasions and the last time that I talked to Mr. Borgaro with reference to anything was when Mr. Mills, Deputy United States Marshal went there to take these cartridges as well as the guns—at the previous time, the guns and, later, the cartridges, on a search-warrant. This conversation was the day following the day that Mr. Mills was there, I think. I do not recall what was said; it was with reference to the guns and to the cartridges there. That conversation was at Bogaro's store. He was not under arrest at the time until the Marshal put him under arrest later. I know that the guns had been moved downstairs, the balance of the shipment of guns had been moved down in his basement and the empty boxes were placed in the basement. I cannot say if the ammunition had been moved or not. It was in the store, but if it was upstairs or downstairs, I am not sure. The arms were taken in charge by the [47—7] United States Deputy Marshal, and both arms and ammunition were stored in a place down at the old El Paso and Southwestern Depot, the Border Patrol, in one of the rooms there.

As to the defendant, Gandara, I have been really well acquainted with him since about—along about the 22d of June. I have seen Mr. Gandara in El Paso quite often before that, but I was not real

(Testimony of John K. Wrenn.)

well acquainted with him before then. On the 22d of June, I met him at the depot in El Paso and we went on the train together, coming from El Paso to Tucson. Mr. Hayes, Mr. Gandara and myself were in the same coach sitting together, chatting along. In that conversation we talked about different things, and we discussed the Mexican situation and the revolutionary situation and the Yaquis, and we were talking about the Yaquis particularly, and the movement. During our conversation, Mr. Gandara said that he was in sympathy with the movement of the Yaquis, was in sympathy with them and in sympathy with the cause, and things to that effect. He spoke of being among them and having visited them in Tucson on several occasions at a previous time, and that he attended several of their meetings—sort of get-together meetings. In other words, he would visit them. He spoke of one occasion when he was at a meeting of the Yaquis and while he was there Alfonso de la Huerta came there and made a talk to the Yaquis and kind of ridiculed Gandara with reference to his going on visits to the Indians, and told the Yaquis that Gandara was no good and things to that effect. That was, I judge, on the 22d of June, we got here on the morning of the 23d, and we separated—Mr. Hayes and myself went to the Border Patrol, and I don't know where Mr. Gandara went. Later, probably the evening of the 24th, Mr. Hayes and myself and Mr. Johnnie Farrell, Border Patrol Inspector, went out to Mesquital, which is an Indian

(Testimony of John K. Wrenn.)

village on the Santa Cruz River, south of town, six or seven miles. I went out there in a car with Mr. Hayes and Farrell, and we went to the house of an old Indian by the name of Antonio Molino at one of the houses at Mesquital, and there we saw Mr. Gandara. He was there in his car—he was out, but the car was inside of the yard of old man Molino's place. This was in the daytime. We had a conversation [48—8] with him then. Well, I met him, of course, again, and I asked Mr. Gandara what he was doing there, and he said, "Well, you know what has happened? You know it." I said, "Yes." "Well," I said, "I was surprised at you." Of course, we talked of the seizure of ammunition and guns made by the boys on the 22d at that particular place, Molino's place and the other Indians living around, and Mr. Gandara, of course, expressed himself and says, "Well, it is too bad," he said; "I am naturally for the Yaquis, in sympathy with them," and he said, "What are you going to do with me?" I said, "Mr. Gandara, I am not an arresting officer; I will have to take the matter up with the United States Assistant Attorney and the best thing I can do is to meet you to-morrow some time," which was agreed upon, and we talked about the rifles that was seized there, and the cartridges, and he said, "Well, all of that was mine," and he said, "Of course, the rifles that was taken before in this part of the country here from the Yaquis were guns that I had given them, that I had furnished them, as well as the cartridges and the

(Testimony of John K. Wrenn.)

provisions which you will find here, which the men have found here, I gave to them; and the guns in question, why, they were bought by me, and I had a man by the name of Chito Valenzuela—he was my man—to make these deliveries here; those deliveries that I did not make, and I don't believe you found all of it," he said, "I am pretty sure." I said, "Well, I didn't find it; the Border Patrol found it; I found part of it one time,"—that is, relating to the arms and ammunition. He later made a statement as to where he secured these arms and ammunition. We talked quite awhile around Gandara's car, and in the yard, and I spoke up saying there was a quantity of provisions in the house, and he said, "Well, that had been taken from them." I told him, "No," that I didn't think so; that it had been called to my attention by the boys, that they had left some provisions in the house of Molino and some of the other houses, probably. "Well," he says, "The guns—some are new and some are old; some of the guns are new and some of the guns are old, but I have furnished to these people both the new guns and the ammunition for the new and the old guns." Then the [49—9] conversation came up about him going back to town and I didn't see any more of him until next morning—probably ten o'clock or about that time. He was in town here, I think, down at the Border Patrol. I can't recall all who were present, but I would say that Mr. Gray and Mr. Caldwell and probably Mr. Farrell were there. I am not sure Mr. Gray was

(Testimony of John K. Wrenn.)

there. I believe Mr. Hayes was, and while Mr. Gandara was there, we went over the same thing—about the same line of conversation, and then from there we went up to town and we talked part of the time. He made a statement down at the Border Patrol and went on to tell about furnishing the Yaquis with arms and ammunition, provisions and different things for making the trip into Mexico, and said that he was to lead them, and that they intended to go on probably a Sunday before that, but something came up with reference to some of them not being ready to go, and that he intended to go with them within a short time after his arrival here, and, of course, the officers finding the guns and ammunition, detaining a number of the Yaquis, had prevented his going with them. That was all the conversation with reference to what he had to do with them at the time. I had a conversation with him later during the same day, on the street going up to the Western Union office. Just he and I were present. We continued talking about the movement. The question of the guns came up, where they came from, and Mr. Gandara said, "Well, I bought those guns from a man named Borgaro," or "From the owner of a store down here, Borgaro; I talked to him and he told me that he would get the guns in Tucson, at a previous time; I talked to him about getting the guns; that he was unable to get the guns here, and later he ordered them; that I designated a man named Chito Valenzuela who is a Yaqui Indian, to receive

(Testimony of John K. Wrenn.)

and pay for the guns; that is, the rifles that were found out there, the new guns as well as the guns that was not delivered, and—" he says, "I think that Chito has paid him for the guns; anyway, I gave him money to pay for the guns, that is, the full amount; all of the guns, the seventy-five or the eight cases of rifles, and that—" "And inasmuch as that only twenty-five, or a part of them, was delivered [50—10] out to the Indian village, and Chito paid for all of them, because I gave him the money to pay for them. Chito Valenzuela is his name."

TESTIMONY OF ANTONIO MOLINO, FOR THE GOVERNMENT.

ANTONIO MOLINO was thereupon called by and as a witness for and on behalf of the Government, he having previously been sworn, and testified substantially as follows:

Direct Examination.

My name is Antonio Molino. I am a Yaqui, and live at Mesquital, where I have lived fourteen years. I was living there during the months of May and June, 1927.

I saw the defendant, Gandara, during the month of May or June at my house in Mesquital. I have also seen defendant, Bishop Navarette, at Mesquital at Chico Feliz's place. They were there because that was the place where I lived. Now, I am a poor man; I have to work. This Chito came

(Testimony of Antonio Molino.)

up to my house. Chito's full name is Antonio Valenzuela. As to whether he is known by any other name, we tried to call him Chito from his boyhood days and still call him Chito. With Chito was a man named Miguel, with a Yaqui. First, Gandara came to my place. Bishop Navarette was present at that time, and was within hearing of the conversation. The Bishop was there, and he says to us, "Boys, I want to tell you something." Bishop says, "Here Gandara brought me here." "I know him since he was a child or a boy—and I want to tell you something else," he says. "Now, this Gandara, when he goes to fight, I want you to go with him." The Bishop says for us to go with Gandara. "Now," he says, "I want you to go with this Gandara to opposite side." "Now," he says, "If this Gandara does not do the right thing, hang him to the highest post you can find." (The record shows that the acting interpreter was here excused and a new interpreter called and the examination was again begun, and the witness was asked to first tell what Jose Gandara said, to which the witness replied:) "The word that I have given here, they are all written down there." (The witness was here admonished by the Court to tell it again, to which he answered:) "All that he said to us before must be written down there. I cannot state there now. There is no lie there."

The same day that Gandara came there with Chito Valenzuela [51—11] and Miguel Mantuma, he told them to go with him and say that as soon as

(Testimony of Antonio Molino.)

he got to the river with the rest of the Yaquis that he could fix everything up down there. He said that if he could fix everything up in a good way with the rest of the Yaquis that he would come back. Mr. Gandara said to the Yaquis to come with him down to the Yaqui River, and after he got down there with him, if he would fix everything up all right, that he would come back this way. That is what his statement was. After Gandara talked—I am awful old man, of the age I have got, I said, I made a remark to the rest of the Yaquis, that don't seem very good to me. He said, "I don't know." And then I made the remark there might be something happen in this affair, and then Chito and Miguel with the matter, and they said, "You beat me with those words that you said."

Bishop Navarett came there afterwards, but he could not get what he wanted with us. As to whether or not Gandara came back to Mesquital again, he comes there every once in a while,—he came back after the time I have told you about, looking for me.

I have testified that Bishop Navarette and Gandara went down to Mesquital—you have it in writing now. Bishop Navarette told us to go with Mr. Gandara; that he was there because our people was down there in war, fighting and killing people, and then, for you fellows to go with him; myself not. I were not going, but those fellows that were around there. Myself, I live there. I could not go—but I was hearing anyway. If we don't do that to de-

(Testimony of Antonio Molino.)

fend ours for ourselves, if we don't follow this religion, he says, "You Yaquis will all be smashed down all the time—all the time smashed—smash you down. If we do that, we go down and start a war, and then we clean up everything and then we can live in peace down there."

After all got through talking, at the conversation I have just related, we were all there together, these women that were here this morning were also there, about thirty there together, and then the Bishop got up and made some kind of remarks, religion remarks, to bid us good-bye. Gandara was there at the same time [52—12] the Bishop was there. As to whether Gandara said anything to the Yaquis down there, while the Bishop was there he didn't say anything to those Yaquis that came from Sonora. He talked to Chito and to Valenzuela and that other Yaqui, he says and he was fixing everything up with them. Gandara made a remark while the Bishop was there, not to me, but to the rest of the Yaquis that was there; he says, "When we get down there and we have victory, all the lands down in the Yaqui River will be left the same way as they were before." When that remark was made, the Bishop was not present. As to what Gandara said while the Bishop was there, I have told you all that he said. He said, "Boys, if we don't join together"—that's the first word he says, and then, "If," he says, well, if you ask fifteen or twenty questions like you have been asking me here, I can't say anything, because you have got

(Testimony of Antonio Molino.)

it all down there what I have said before. As to what Gandara said in the presence of the Bishop at Mesquital, he said, "Kill Mexicans"—that's all he said. Bishop Navarette and Gandara came together in a car and nobody else was with them, and they stayed, more or less, about an hour. That night that they were there, they said they had to be at Nogales the next morning, and they left there that night. They were there together only one time.

As to whether Chito and Gandara first came there together, who are they? I don't know them. This Gandara—well, you asked Gandara before. Yes, they came there together. I didn't say that I didn't believe in that enterprise, or that there would be nothing doing. And then they left and the Bishop never came there no more.

As to whether Chito and Gandara came first—yes, they were there all the time. Then afterwards Gandara and the Bishop came together. He couldn't get nothing out of us unless he brought the priest, and they went away and brought that priest.

I saw Borgaro once at Mesquital when he brought the rifles. Antonio Valenzuela came with Borgaro at the time he brought the rifles. I was irrigating when he came. As to whether I saw them there with the rifles at the time they brought them I was eating my dinner at eleven o'clock that day. I saw Borgaro at the time he came. He [53—13] had thirty rifles. I know what those rifles were to be used for. They were to be used to get up a war and

(Testimony of Antonio Molino.)

fight Mexico. At the time they brought the rifles, Chito said there were fifty rifles more and these thirty rifles that they had taken down there. He said, at the time they brought the rifles, that they were going to raise a war with the Yaquis. Them Yaquis were around in my house there and were Yaquis like me, and when they come to my house I have got to give them something to eat, and the remarks that was made was that the rifles was to go and fight Mexicans in Mexico with. At that time Esteban was with Chito and that is all. And Chito said to me, "Compadre, here is a rifle," and I said, "Not compadre—not in my house." "To set them over there," he says. As to whether Chito made any statement at the time he came down there with the rifles with Borgaro, he said nothing more than that he was coming back with more rifles. Chito said that the man that is over there gave the money to buy those rifles. I mean Joe Gandara. Gandara told me that he gave the money to buy the rifles with and Chito also told me that Gandara had furnished the money for the rifles.

Cross-examination.

I cannot tell you how old I am. I was fifteen years of age when I came here, and I registered here in the city hall forty-five years ago, and have been here all the time ever since. I never went back there no more. I have lived in Tucson all the time. I have been over at Palo Alto, and am well acquainted with Stewart and all them fellows over

(Testimony of Antonio Molino.)

there and the ranchers. As to whether or not I have been opposed to all Yaqui revolutions in Mexico—since September of last year—what war could I agree to? I am here. I don't want to leave here. I want to live here without doing anybody any harm. I have been opposed to this movement that had been started to send Yaquis down in Mexico ever since this thing about Gandara started, which was on San Juan's Day, the 24th of June. As to whether my house is a rendezvous for all of the Yaquis that came out of Sonora early in April or May of this year—they came to different [54—14] places, not only to my house. A great many of them came to my house. I am a poor, hardworking Yaqui. You think to believe him some general or something down there, but I am not. I cannot work now because I am hurt. I am injured. It has been about three months since I worked. It is not a fact that I quit working since I gave my testimony at the preliminary hearing in this cause, nor that since that time I have been drawing money from the Border Patrol that came from the Mexican Consul. They don't give me any money. There is no one that has given me a five cent piece. As to where I get my money to live on for the past three months, I have a boy to provide for me. His name is Felipe Molino.

I know a Yaqui Indian woman named Lupe Mendibles who lives on the road from Mesquital, over to 6th Avenue. I talk with her all the time. She is my *comadre*. I never told her that I was

(Testimony of Antonio Molino.)

getting \$2.00 a day from the Mexican Consul for this testimony. I didn't tell her a word. I never told her I was to get money for the testimony I was to give here.

All the world knows that a large force of Yaquis—about one hundred and fifty in number—came over from Mexico along in April and May of this year, and as a matter of fact I know that those Yaquis came up from Mexico in order to get a supply of ammunition to take back to the other forces of Yaquis in Sonora, and that was their purpose in coming here, and they were going back again.

Bishop Navarette didn't come to my house. He went to Chico Feliz's house, and Chico Feliz was there and a crowd of about thirty-five Yaquis who had come up from Sonora to receive this ammunition. There was about thirty-five Yaquis in my house, and I was harboring these people there myself. I was harboring them because of sympathy and the way they looked. Their clothes were all torn and ragged and things like that. A great many of them were working right there. I don't know if they were working for money to get ammunition to take back to Mexico. I did testify here that I knew that they were gathering up cartridges, and I knew it because they were going to give us some. At our home in Mexico we could not live; we can [55—15] not own our homes. There is no way for us to own our homes. If we go to work and raise one or two or three cows, then the Government comes in and takes it away from us.

(Testimony of Antonio Molino.)

If we raise a hundred sacks of grain, it would be all taken away. It is not a fact that these people came here to consult with these Yaquis in Tucson. They were brought here by Juan Frias—these Yaquis that were down around my house there, they were living there—Juan Frias had them there. I had nothing to do with the movement at all. I had nothing to do with Gandara or anybody. I went over to Chico Feliz's house every time Gandara came there, to hear and observe what was going on, and I was suspicious, like it happens now, that nothing happened. All the Yaquis that were there have not gone back to Mexico. They are there. I don't think any of the Yaquis who were there the night that the Bishop spoke, are here. I think they were over in Phoenix or somewhere else.

On the night when the Bishop went there, the Bishop came with Gandara and talked for about five minutes and all he said was that he had known Gandara for a number of years and that Gandara was a good, honest man, and that is the substance of what he said there. He didn't say any more.

I cannot state to you what date or what time it was when Borgaro and Chito Valenzuela went there, because I am not a person that has been studying and am not educated, but I saw him there one day at eleven o'clock. My compadre, Chito or Antonio Valenzuela was with Borgaro. I don't know where Valenzuela is. I have never seen him since the time they took the rifles away from us. I don't know how many rifles they got. They never got

(Testimony of Antonio Molino.)

any at my house. They got rifles from different houses. I didn't know that those rifles were buried. They buried them. They dug some of the rifles out of the chicken-house in my house, but I didn't know they were buried. I didn't bury them there at my house. I don't know who buried them there. Those fellows that had the new rifles, they must have left those rifles there. I was there when they dug the rifles up. They got me up there and they brought me here to court. They brought me on this side first, and then they took me down to the Border Patrol. [56—16]

I have known Borgaro since he married Don Wesa's daughter. I have never been dealing with him, and never bought any ammunition at all from him. The automobile he came in was a big car. I don't know what color, and I don't know anything about cars. I was eating at that time. I couldn't pay any attention to the color of the car. I was paying attention to my eating. I came from my work and had to get back and get to my work again. While they were unloading the guns, I was inside in my house eating. I saw them unloading the guns, and I told them that they were unloading there, not to unload them there, to unload them somewhere else. Chito was sitting in the car smoking a cigar. As to who helped unload the guns, a woman went to take them and wanted to take them in my house, and I told them not to take any in my house, to take them over there. That woman's name was Lola, but I don't remember her last name.

(Testimony of Antonio Molino.)

She is not here to-day, she is gone to Marana. Lots of the boys helped, but they are not here now. The boys of Chico Feliz were there. They are not here. Francisco Feliz was not working. I don't think he was there at the time those guns were unloaded. I don't think Juan Alvarez was there, because I didn't see him there. I think Jose Rivera was there. He was carrying some guns. I don't know if I saw him there. They took them over towards Chico's—on the other side of Chico's place. I don't know what they were going to do with them. I don't know if Antonio Cupas was there. I didn't see him. As to whether Francisco Valenzuela was there—that poor fellow don't know anything. I don't know that they brought him here.

As to whether I ever talked to the Mexican Consul about this case, or talked to him a little while ago out here in the hall at noon, I don't even know if that is the Mexican Consul or not. I don't know who the Mexican Consul is, and I don't even know him by his spots. I don't know anything about his spots.

The first person I talked to about what I knew in this case was Mr. Perrin, the Assistant United States Attorney. I talked with only one Friday evening, and with those two men along about San Juan's Day. Every time they brought me here, I have talked with them. [57—17] I have been here to talk this thing over three times.

As to how many conversations I had with Mr. Gandara out there at Mesquital, every time that he talked with me I had a conversation with him.

(Testimony of Antonio Molino.)

When he didn't talk to me, I don't talk to him. As to how many times he did talk to me, I have no pencil to put down the times he spoke to me, but every time he speaks to me I speak to him, and he told me he wanted to go down with these Yaquis who were returning to Mexico. That is about all that he did tell me. No more. That is all what he told me. What I have seen—is no more.

Redirect Examination.

In answer to Mr. Hilzinger's question, that when the Bishop was down there, he didn't say any more than that Gandara was a good fellow; what I have said is true. What I have stated on direct examination about the Bishop talking to the Yaquis in reference to going to Mexico to fight is correct. That is the truth. And what I stated on direct examination as to what Gandara said about going down to Mexico and fighting is correct. That is true.

TESTIMONY OF FRANCISCO FELIZ, FOR THE GOVERNMENT.

FRANCISCO FELIZ was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

My name is Francisco Feliz. I am a Yaqui Indian. I do not know how long I have been in the United States. I came here when I was seven years old. I came to Tucson, and I have not left Tucson. I was around Tucson during the months

(Testimony of Francisco Feliz.)

of May and June, 1927. I know Jose Gandara, and I saw him during the months of May or June, 1927, at my house at the Scotch Farms. He was not doing anything there. He came there to see the Yaquis that had arrived from Sonora. Chito Valenzuela came with him. Gandara told the Yaquis, who came from Mexico, that he was going to help them, and that conversation was held in the presence of Chito. I have never seen Jose Gandara at any other place.

Q. Did you ever see this man who is seated over here, Bishop Juan Navarette? A. Yes, sir.

Q. Where did you see him?

A. I saw him at my house. [58—18]

Q. What was he doing out there?

A. He came there to talk to a number of Yaquis.

Q. Was Jose Gandara there at the time he was there? A. Yes, sir.

Q. And were they out of hearing of each other?

A. There were some people there.

Q. And what was said at the time by Bishop Navarette?

A. He said to come with— He said to go with him, that he would help him.

Q. To go with who? A. With Gandara.

Q. And what did he mean when he said, "Go with him and he will help you?"

Mr. CURLEY.—We object.

The COURT.—Objection sustained.

Q. Did he say anything else?

(Testimony of Francisco Feliz.)

A. He was going to help him for the Yaqui River, to make peace down there.

Q. And was the Bishop talking about that?

A. Yes.

Q. And now, what did Gandara say?

A. He says he was going to go with him to the Yaqui River.

Q. What did he say he was going to do down there at the Yaqui River?

A. He was going down there with him, to put them down in peace, so they could be settled down, put them all down in peace.

Q. Did he say how he proposed to put them down in peace? A. No, sir.

Q. Did he say how he was going to get down to Mexico?

A. He was going to walk with them to Mexico.

Q. Was he going to take anything with him?

A. He was going to take some rifles.

Q. Did he say what he was going to do with those rifles?

A. They were going to help themselves with those rifles, because the government was at war down there.

Q. And did they say what they were going to do with the rifles? [59—18a]

A. They were going down to fight against the government.

Q. What government?

A. Mexican government.

(Testimony of Francisco Feliz.)

Q. Did he say this in the presence of Bishop Navarette?

A. No, he didn't say, but he said it afterwards.

Q. Did he say anything of this kind when Bishop Navarette was present?

A. When Bishop Navarette went out he said it.

Q. Was Bishop Navarette there at any time that he talked about going down to Mexico?

A. Yes, sir.

Q. What did Gandara say about going to Mexico while the Bishop was there?

A. When the Bishop was not there, he didn't say anything. After that, Gandara said he was going to go along with the other men to Mexico.

Mr. HILZINGER.—We object. He said he didn't say anything.

The COURT.—Repeat the question and let him answer again.

Q. (Repeated by reporter.)

A. To tell the truth, I don't remember what he said or what happened.

Q. Do you know what he was talking about at the time?

Mr. HILZINGER.—Who?

Q. Do you know what Gandara was talking about at the time?

Mr. CURLEY.—At what time?

Q. At the time the Bishop was there?

Mr. HILZINGER.—He said he didn't say anything at the time the Bishop was there.

(Testimony of Francisco Feliz.)

A. I don't remember what he said; I said a little while ago what he said.

The COURT.—Was the Bishop there when he said that?

Mr. PERRIN.—Yes, sir. [60—18b]

I have never seen the defendant, Borgaro, out at the village, but I have seen him here at his store, but not around Mesquital at any time. I know there were some rifles taken down at Mesquital, but I don't know who took them. I was not present when they were taken down there. I was at my work. I was just coming from my work when Gandara came there with the ammunition, but I don't recall the date. I think it was in June, after San Juan's Day. As to how long after, I don't understand that question what you asked me before, last San Juan's Day, he says. It was before San Juan's Day. When he brought the ammunition down there, he was by himself. He came in his car. I didn't count the ammunition. I couldn't tell how much there was. He had it in sacks, and I didn't count the sacks. There was a small amount, I could not tell how much. The sacks were full. Gandara hid the ammunition right on the edge of the bank of the river. That is, [61—19] the rest of the Yaquis that were there, they took the ammunition and hid it. I was in my house and had nothing to do with the ammunition. I saw them hide it. The Yaquis and not Gandara hid the ammunition. Gandara came there and got off his car and told them he had ammunition for them. I heard him

(Testimony of Francisco Feliz.)

say that, but he didn't say where he got the ammunition.

(Adjournment was here taken until 9:30 A. M., November, 23d, when the same witness resumed the stand.)

I understood every question that was asked me here last night. I testified that the Bishop came down to my place, which is over here towards the Scotch Farms Ranch, that is, at Mesquital. The Bishop did talk to someone at Mesquital. He talked to several that were there. I heard him talk. He told those Yaquis that came from the Yaqui River that he was going to help them. He said he was going to help them any way he could and was going to help them over there in their own country. He said he was going to help them by working for them so they could be in peace and to go down and be in peace. That is all he said right there. That he was going to go over there and make peace so they could all live happy. As to how he said he was going to make peace, he said any way he could. That is all that I heard. Nobody has been down to the village talking to me in the last few days. The Bishop said he was going to give them arms and ammunition and everything so they could go back. He said that in his talk to the Yaquis. Gandara was with him then. I have not stated that I saw some guns delivered at Mesquital. I never saw Esteban Borgaro at Mesquital at any time. I have seen Chito Valenzuela at Mesquital. He would come there with Gandara. They had a talk there,

(Testimony of Francisco Feliz.)

but I don't remember at this moment what they said. I have heard Gandara talk about guns and ammunition. He said he was going to give the Yaquis some ammunition, but he didn't say how much. He said the ammunition was to be taken down to Sonora, that the Yaquis were going to take it and he was going to go along with them. He said he was going along with them. The Mexican government were fighting with the Yaquis and they were going there with the Yaquis to talk for the Yaquis, going to use this ammunition to talk with. Chito never said anything about [62—20] going to Mexico. He was at Mesquital with Gandara, when Gandara told the Yaquis about going to Mexico.

Cross-examination.

I have been here since I was seven years old. I live out at this place, Mesquital; I do not speak English. This place Mesquital is right on the side of the road and right between the road and the Santa Cruz river-bed, and there is a lot of mesquite there. The village consists of three or four houses and I live in one of them and Antonio Molino and Juan Alvarez and the others live just a little bit aside. My house is about thirty feet from Antonio Molino's. It is not one hundred feet. I haven't measured it; it may be. This house of mine is a meeting place for the Yaquis who came out of Sonora along in April or May of this year, and my house was a meeting place for the Yaquis in May of this year. As to how many of those Yaquis were there

(Testimony of Francisco Feliz.)

that came up from Sonora. There were several. I didn't count them. I think there were probably fifty all together. I didn't count them. There may have been one hundred. And they would meet quite frequently at my house. They came to my house because they were Yaquis and I let them stay at the house for the reason that they were hard up and I let them stay there and harbored them in my house. And these men had been engaged in a revolution in Sonora prior to the time they came up there and they were after them. They had been fighting before they came here and they were right after them. They came up here for the purpose of getting arms and ammunition to take back and go back and fight. That is true; they didn't come because they wanted to come. Juan Frias told me that he had a company here that was going to furnish him all of that stuff and that is what they came up here for—to get that stuff and go back and fight. Some of those Yaquis have gone back—a few of them; I have not counted how many are left here now. They have got scattered around. Nobody ever asked me to go down and fight during this period. The truth of the matter is that these men came up from Mexico and they had been engaged in a revolution there and some of them have went back. I was arranging these [63—21] meetings down at my house. I did not call anybody. As I said before, they came there very hard up, very poor, and they knew that these people came there and they came over there. There were not

(Testimony of Francisco Feliz.)

forty men, but there were about fifteen and they lived at my house, waiting until they got some clothes to get out. As to whether they were to go back to Mexico, some of them remained here, but I did not count them.

Molino was there the night the Bishop came. He was over at his house. They came first to Molino's house and then from Molino's house they came over to my house. The Bishop stayed about half an hour and he talked all that time. That was outside of the house. Right there he told them he was going to help them. He told them to go with him and he would give them peace, so they could live in a quiet way and that Mr. Gandara was going along with them, and that is all I can remember. I remember everything, but what does not happen you cannot remember. As a matter of fact the Bishop went there and told these Yaquis that he wanted to see them in peace in Mexico, and that is all that he said, and it took him a half an hour to say that. Gandara spoke there that night, but when the Bishop was there he didn't do any talking. It was after the Bishop was there that Gandara did the talking, and Gandara then told them not to be afraid of him, to go with him, and that is all Gandara said. He talked a little while. Molino was there then. Gandara did not talk at all while the Bishop was there. I am a Catholic. Gandara stayed there after the Bishop left and the substance of what Gandara said there was that he was going along with the Yaquis and he was going down there

(Testimony of Francisco Feliz.)

to help the Yaquis. I know that the Yaquis had been in revolution for a long time against the Mexican government. The Mexican government had taken their lands from them, and they were trying to get back what was theirs and that is what those men who came to my house had been fighting for down there. He said they followed them around wherever they hid themselves; they have got to help themselves some way. This meeting when the Bishop was there was before San Juan's Day. I have not seen any [64—22] of these gentlemen here with ammunition and guns except Gandara and he had ammunition. I never saw the Bishop with any guns or ammunition, and I never saw Borgaro with any guns or ammunition. As a matter of fact, the Bishop did not say anything about furnishing arms and ammunition to the Yaquis. It was Gandara who said that.

I have talked to no one about this case. I do not know the Mexican Consul at all. No one has paid me for coming here. I always worked for Manning, but I am not working for him now, right now I am not working. I quit working about two weeks ago. I was working for Mr. Nichols and they called me over here and I had to come here. I always occupied myself at work, and when this thing came up and happened in my house, they carried me from one place to another around here. I have not talked this matter over with Molino—I talk what I see—that is all, what I see. Molino did not tell me to be here and be sure and tell here that the Bishop

(Testimony of Francisco Feliz.)

said that he would furnish arms and ammunition to the Yaquis. Molino never told me anything. He is an old man and I hardly ever talk to him. I never have talked with Molino about this case at all. We talked about some other matters. I live in my house and he is in his own house. The truth is I don't know the Mexican Consul, and he has never talked to me about this case. I have talked to Mr. Wrenn a good deal about the case; when I come here I talked to him and Molino was present when I talked to Mr. Wrenn. As to whether or not Mr. Wrenn told me what to say down here, no, he didn't. We know what to say.

Redirect Examination.

Did I state, in answer to your question, that the Bishop told me he would furnish arms and ammunition? I don't remember if I have said that in direct examination. Owing to the fact that I am a Catholic I am afraid to say anything against the Bishop. I kind of hesitate to say anything against anybody for the reason that I am here now. They just carry me about, back and down. I don't want to be here at all.

That is the reason that I am not telling all about what happened down there—I have said all that I can remember. I have told Mr. Hilzinger, counsel for defendant, that they had not talked [65—23] to any of the Yaquis down there except the ones who were going back to Mexico. All the Yaquis that were in the village heard the Bishop's words.

(Testimony of Francisco Feliz.)

Three of us living in the village had lived there before the others came out of Mexico. Myself and Antonio Molino and Juan. Altogether there were four Yaquis that lived in the Mexican village and now there are two more living there. At times the Bishop talked to me there at my house, and those that lived around there, they would listen. No, the Bishop never talked to me personally, myself; I went away and when they said that the Bishop was coming there, I came back there to where the Bishop was. As to whether he talked to anybody personally, he talked to some of them there. He didn't pay no particular attention to which one. He talked to several of them around there. The Yaquis said the Mexican government had taken the lands away from the Yaquis, that they are up in the mountains—they are after them, right after them all the time. Mr. Gandara didn't say anything about the government taking any lands away from him and the Bishop didn't say anything about the government taking any lands away from him. I didn't hear anything about the Bishop down there at the village saying that he had any grievance of any kind against the Mexican government.

TESTIMONY OF GUADALUPE FLORES, FOR THE GOVERNMENT.

GUADALUPE FLORES was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

(Testimony of Guadalupe Flores.)

My name is Guadalupe Flores. I am a Yaqui. I live over here on 29th Street. I have been living here for a short time. I was living in the United States during the months of May and June, 1927. Before that I was here a long time. I was down at the Yaqui village near Mesquital during the month of May or the month of June, 1927. While I was down there I saw Bishop Navarette at Mesquital, the man sitting there. Someone came down to Mesquital with him. I know who it was that came with him. I have seen this man sitting there, before (indicating Mr. Gandara). I saw him at Mesquital. He was there at the time the Bishop was there. Referring to Jose Gandara, the man there, he was there. He was there at the time the Bishop was there [66—24] at Mesquital. As to whether Jose Gandara and the Bishop came to Mesquital together, during the night I didn't know them, but they were there. I heard the Bishop, Bishop Navarette, say something to the Yaquis at Mesquital. Bishop Navarette stated to the Yaquis that he wanted to help them. He said some things. In regard to wanting to help the Yaquis, he was going to help them so they would go down to Mexico and fight, for we could not, we were tired out and the people would not go, because they were tired. That is all I heard. As to whether Bishop Navarette said anything about furnishing arms and ammunition to the Yaquis, he says that he wanted to help them, to give them his hand to help them to fight the cause. The Bishop said he wanted to fur-

(Testimony of Guadalupe Flores.)

nish ammunition and guns, so we could go down and help them fight the cause out. He said we were to fight with the Mexican government. We were going down to fight with the Mexican government—just we were long in the Yaqui River and we were going back there with him. That man sitting there, Jose Gandara, said something to us about furnishing us with rifles and ammunition. He talked to us about rifles and ammunition at Mesquital. That is all. I don't know any more.

Cross-examination.

I have been here a short time. I was one of the Yaqui Indians who came from Mexico in April or May. And I came on the American side. I was not picked up by the Border Patrol and taken to Nogales. Twenty-two men came with me. They were not picked up by the officers along the line; they didn't pick us up. We came right to Tucson, twenty-two of us. And we were not apprehended or put in jail at all. We came up here for rifles and ammunition. We had been fighting in Mexico on the Yaqui River. We had been fighting there a long time. Five years. I, myself, had been fighting for five years. There are some thousands of Yaquis up in the mountains in Sonora. More than about two or three thousand, and the Mexican government has been taking their land away in the Yaqui Valley and that is the reason we were fighting. There have been several Yaquis fighting for the last year or so down toward the last, in the mountains. A great number. This rebellion of the

(Testimony of Guadalupe Flores.)

Yaquis has been going on in Mexico for a long time, over sixty years. [67—25] I came to Tucson because I have my family here in Tucson. The other twenty-two men were coming here to work; they have got their families here. I didn't say a while ago that I was going back to fight. As to whether the other men were going back to fight, they were working; I don't think they will go back no more. They didn't intend to go back at the time they came in. I don't know if they were going back, or not. I wasn't going back. As to what I was doing at that meeting, at Mesquital, I have my family there at Mesquital; I was living there. I just moved here lately, over to this other Yaqui village down here. As to who I was living with in Mesquital at the time of the Bishop's visit there, I was working for Mr. Nichols and I had my family at Mr. Nichols' house. I did not live at Mr. Nichols' house, I was living in the same land that belongs to Mr. Nichols. As to whether I wasn't living at Mesquital, it is the same place there, he says, right next. I was living with Molino. Molino is an acquaintance of mine. We are not related. I lived with Molino about a month or a month and a half when I got out of work there I moved over this way. I was living with Molino at the time the Bishop made his talk in Molino's house. I don't remember what the Bishop said. I didn't hear him. As to whether Molino is the man that told me what to come and say here, he didn't tell me anything. I have talked this matter over with

(Testimony of Guadalupe Flores.)

Molino—the first word that I told you—that is all. I have forgot what I said, the first word. They have got it down there. No one told me to say that they have got it down here. I haven't talked this over with Chico Feliz; I live here, he says, on the edge of town and they live out at Mesquital. I could not talk to them. I have never seen the Bishop before; not before. I don't remember what he said. I was away from the house when he said it. As a matter of fact I didn't hear anything the Bishop said; I didn't understand what he said. When I stated, a little while ago, that I heard him, I was not telling what somebody else told me to tell here.

Redirect Examination.

I did not understand all of Mr. Hilzinger's questions. I told you I heard the Bishop talking, but I didn't understand what he said. A little while ago I told you what I heard him say, those few, only a few [68—26] words that I understand what he said, and the rest of that I didn't hear what he said. I understood those few words. As to whether I heard him at that time say that he was going to furnish arms and ammunition, yes, there was two of them there at the time.

Recross-examination.

I don't know which one of the two said that they were going to give arms and ammunition in their talk.

(Testimony of W. L. Conger.)

What I told you was the truth, the straight of this thing, that I did not hear anything the Bishop said. That is the truth. [69—27]

TESTIMONY OF W. L. CONGER, FOR THE GOVERNMENT.

Direct Examination.

My name is W. L. Conger and I live at 817 E. Speedway, Tucson, Arizona. I have lived in Tucson since 1920, and I lived here all this year. I am acquainted with Mr. Borgaro. I have been acquainted with him since first coming to Tucson, or shortly thereafter. I have had business dealings with him, selling merchandise. I had business dealings with him this year and sold him some rifles. Mr. Borgaro came to my house and asked me if I could procure these rifles for him and I told him that I did not know, that I would try, which I did, as you know, getting quotations. Well, they came to my house and Mr. Borgaro asked me if I could get these rifles for him, some 30-30 rifles, and the amount, he said, could be anything that I could get, fifty or one hundred, I believe, and I told him that I did not know, that I would try to get them, so that was about all the conversation there was that evening. I took no notice of the time that Mr. Borgaro came to my house, but I would say it was about, around 7:30 or 8 o'clock in the evening, along that time. In those other business dealings I had with Mr. Borgaro I was acting as a salesman for Dunham, Carrigan & Hayden Company of San Fran-

(Testimony of W. L. Conger.)

cisco. I was not acting in that capacity at the time Mr. Borgaro consulted me in reference to the rifles. The next day, the next morning I went down and wired to Dunham, Carrigan & Hayden Company and asked if they had the rifles in stock. I do not recall that I had any correspondence with Dunham, Carrigan & Hayden Company in reference to these rifles until after they were shipped. I sent a telegram and received a reply in which they said they could furnish the guns at a certain price. Mr. Borgaro stated at my house that he wanted to get the guns as soon as possible. He did not make any statements in my house as to whether he had made inquiries around town for rifles and to the best of my knowledge, did not inquire as to whether there was an embargo on arms into Mexico. I did not have any discussion with him that evening as to whether he could sell the guns outside of his store, but he asked me if he could sell the guns from the store and I told him he could retail them, in a retail way, one or two at a time. I did not offer him any advice as to extradition or as to embargo. [70—28]

I did not receive any reply from Dunham, Carrigan & Hayden Company, in reference to the rifles before they were shipped, no reply at all, only the telegram, and then I wired back, ordering the guns. They were to be shipped by express, I don't know whether shipped c. o. d. or not, or shipped to shipper's orders, shipped to Dunham, Carrigan & Hayden Company notify Borgaro and to be collected

(Testimony of W. L. Conger.)

on delivery. As to the arrangements made at the bank for the payment of the rifles, Mr. Borgaro and I went to the bank, the Southern Arizona Bank & Trust Company, and he did not have sufficient money in the bank so he borrowed money and had the bank deposit money to cover the order for Dunham, Carrigan & Hayden Company. I think the amount he borrowed was \$1,200.00, I do not remember exactly. The total cost of the rifles that were shipped was twenty-one hundred and some dollars, I don't recall the exact amount, twenty-one hundred, I believe, as near as I can remember. I held a conversation with Mr. Borgaro in his store, subsequent to that time, at which Mrs. Borgaro and the man he had as saddle worker or harness worker were present. Mr. Richey was present at one time. The time when Mr. Richey was present as I recall it was the next day or two after the guns were delivered to Mr. Borgaro. There was no conversation with Borgaro in reference to the time the guns were shipped, they were simply ordered shipped, there was no conversation except the evening he was out at the house. As to my statement a little while ago that I had held a conversation at his store, that was after the guns were shipped, within the next day or two, I said I saw him. That time it would be Mrs. Borgaro and Mr. Borgaro and this harness man and at other times it would be only Mr. Borgaro and at other times Mrs. Borgaro who was present during the course of the conversation. As to what she said in reference to the shipment of rifles—I know

(Testimony of W. L. Conger.)

that the first conversation I recall after the shipment was received, how the shipment was delivered to him without the payment of money; the Express Company delivered the guns to him without the payment of the money, which they should not have done, and the first conversation was with reference to this, and then he went down to the bank and drew his check in favor of Dunham, Carrigan & Hayden Company.

He had a conversation with me in which he stated that the [71—29] rifles had been seized, he did not make any further statement. I have been to Mr. Borgaro's store on numerous occasions and have previously sold Mr. Borgaro arms and ammunition. As to how this order compared with previous orders placed with me by Mr. Borgaro it is much larger. I could not state positively but I should say as to previous orders of 30—30 rifles that the amount he had ordered was within a half a dozen, six.

Cross-examination.

As to whether the conversation was held with Oscar Richey—I don't know what his name is. Mrs. Borgaro was there and Borgaro was not the first time. I have dealt with Mr. Borgaro ever since 1920 and I know that he runs a store down there. He handles a general line of hardware, guns and ammunition, and he handles curios, Indian curios, baskets and blankets, and he handles chaps, leather coats, bicycles and repairs, toys for children and some jewelry and Mexican and Indian novelty work.

(Testimony of W. L. Conger.)

I know that he has not been carrying on that store ever since I have been here, Mr. Davant had that store when I first came, but I know Mr. Borgaro soon after he took the store over. I don't know really how long Mr. Borgaro has been carrying on the store; I do not know what time he took it over from Mr. Davant. I was acting for my company and considered this as an ordinary business transaction, and customary with Mr. Borgaro in that business. I had no record of the date that he came to my house, I think it was in June, 1927.

Redirect Examination.

It was customary for Mr. Borgaro to order ammunition or guns from my firm, but it was not customary for him to come out to my house in the evening to place an order. He never did that before. [72—30]

TESTIMONY OF B. F. HALLIDAY, FOR THE GOVERNMENT.

B. F. HALLIDAY, called as a witness for the Government, having been previously sworn, testified as follows:

Direct Examination.

My name is Benjamin Franklin Halliday. I reside in San Francisco, California, I am sales manager for Dunham, Carrigan & Hayden Company and have acted in that capacity about a year. I was acting as sales manager during the months of May and June, 1927. During the month of

(Testimony of B. F. Halliday.)

June, 1927, we had a telegram from Mr. Conger of Tucson, Arizona, which I have in my pocket, that is, W. L. Conger. (Witness produces telegram.) This telegram was received at our store at San Francisco from the Western Union Telegraph Company and delivered to our place of business. It was addressed to Dunham, Carrigan & Hayden Company, San Francisco, and signed W. L. Conger. This is the original telegram. (Telegram was here offered and received in evidence and read as follows: "Can you furnish for local dealer here 75 or more 30-30 repeating Winchesters or Carbines. Give cash price and state if you can deliver. Signed W. L. Conger.") As to whether we received any communications in reference to these rifles—we received an order for the rifles which was signed by W. L. Conger, which was in the form of a telegram ordering the guns. That telegram was received at our store in San Francisco and delivered by the Telegraph Company. It came to our firm, but did not necessarily come to me in the ordinary course of business. I do not know whether this particular one came to me or not, it might or it might not have. (This telegram was here offered in evidence. Sight draft, notice of shipment, notice of sight draft, letter from credit department of Dunham, Carrigan & Hayden Company to the Southern Arizona Bank and Trust Company, of letter from Dunham, Carrigan & Hayden Company to Southern Arizona Bank and Trust Company and copy

(Testimony of B. F. Halliday.)

of letter from credit department to Southern Arizona Bank and Trust Company. All of which documents were identified, offered and received in evidence, the contents of which are not set forth in transcript.) In pursuance to the orders that were placed the rifles were shipped, I do not know how many, whatever the invoice called for, whatever the order called for. [73—31] These rifles were shipped to Tucson. We have previously done some business with Mr. Borgara, but I do not know what his order was. I do not recall of any previous order having been placed as large as that. [74—32]

TESTIMONY OF C. M. OROSCO, FOR THE GOVERNMENT.

C. M. OROSCO, a witness for the Government, being duly sworn testified as follows:

Direct Examination.

My name is C. M. Oroasco. I live at 270 N. Convent Street, Tucson, Arizona. I have lived in Tucson all my life—30 years. I am a clerk for the American Railway Express Company and have occupied that position for about six years. I was on duty about the 9th day of June, 1927. I am acquainted with Mr. Esteban Borgaro, Jr., who is seated back there. I have been acquainted with him 8 or 9 years. I saw him on the 9th day of June, 1927, at the express office where he called for the purpose of inquiring for a shipment. He

(Testimony of C. M. Orosco.)

did not state what kind of shipment. I saw him at the express office I believe two times on the 9th day of June; it must have been around, I do not know,—9 or 10 o'clock in the morning. As to whether a shipment was received at that time by the express company for Mr. Borgaro—well, it was sent out for delivery. I did not make the delivery, but Mr. Borgaro inquired of me as to the shipment. Mr. Borgaro went into the next department, that is the unloading department. I saw him later on in the express office at which time I had a conversation with him. He asked me if the shipment was in and I told him, "Yes." He asked me when it was to be delivered and I told him to take it up with the driver and he went back again. I don't recall the first time he came, but it must have been about 8:30 or 9 o'clock, and the second time he called was around 10 o'clock. I saw the shipment that was received and I think I could identify the boxes. (Here witness stepped down from witness-stand and examined the boxes, four large and one small box.) This is part of the lot of the shipment of eight.

Cross-examination.

As far as I can tell these are in the same condition as they were when received at the depot on the morning of June 9th. As to whether these signs on here "Winchester Double Action Sporting Carbines" and, etc., and the one "Winchester," on the side, painted on there, are the same as they were at that time—well, well, at the time I

(Testimony of C. M. Orosco.)

saw them I did not look at all the Winchester marks. I saw the address on it and the markings on it. As far as I know there is no change in them [75—33] from the time I first saw them down there when they were received. They came in regular shipment boxes for Winchester Arms, eight boxes of rifles. I never saw a shipment before of arms. I have seen gun shipments, all the different makes, I guess. These came in the regular course of business of the American Railway Express Company and were handled regularly in every respect. There were eight boxes in the shipment. I remember a card that I identified before the Commissioner. I did not see the person who received the shipment, sign it. I saw it after it was signed. That card was not signed but the original was, that was just a copy of the original card. [76—34]

TESTIMONY OF W. E. JONES, FOR THE
GOVERNMENT.

W. E. JONES, a witness for the Government, being duly sworn testified as follows:

Direct Examination.

My name is W. E. Jones. I live in Tucson at 52 $\frac{1}{2}$ Driscoll Street. I have lived in and around Tucson for nine years. I am a bill clerk in the express depot and have occupied that certain position about two months, previous to that time I was a chauffeur for the express company in which

(Testimony of W. E. Jones.)

capacity I acted a little over two years. I was on active duty during the month of June, 1927, and on the 9th day of June, 1927. I am acquainted with Esteban Borgaro, Jr., who is seated back there. I have been acquainted with him as long as I was driving for the express company and delivered stuff there. I saw Mr. Borgaro on the 9th day of June, 1927, at the express office and down at his place of business. I saw him at the express office, well, I think about 9 o'clock. He came there like most others who come down there in a hurry for their shipments. He did not state what the shipment was that he wanted; he asked me if there was a shipment there for him and he said about—I don't know now whether he stated the amount of boxes or not, and I told him I could not tell him until the stuff was checked off the train. He said, if so, what time could I come down there, so I could not tell him exactly then, because we were pretty busy, but I thought probably before dinner, and so he came back some time later and I told him I would be down there between 11 and 12. He came back later I think about 10 o'clock. After that, well, I loaded the boxes on the truck with some other stuff and took it down to his place of business, and I got there about 11 o'clock or a little after. His place of business is at 41 South Meyer Street. I took eight packages or boxes down there, but I could not swear what they contained, I never saw inside of them, saw them opened. The boxes I took down

(Testimony of W. E. Jones.)

there to his place of business I helped one of the boys take them inside. His place of business is on the corner of Broadway and Meyers, it is on the northeast corner, and I made the delivery into his place from Broadway at the back of his store. There is a door there opening on Broadway and there was a boy there that helped me carry the guns inside. After we carried them in we just stacked them up—laid the boxes down flat over by the counter on the far side. After that I [77—35] had him sign for them and pay the express charges. I have the receipt here which he signed. That is my signature on the receipt and that signature was placed on there at the time the delivery was made and this signature was placed on the card by Mr. Borgaro in person. (Card was here offered and introduced in evidence.) I did not hold any conversation to amount to anything with Mr. Borgaro when delivery of these boxes were made. He did not make any statement with reference to the rifles. (Witness was called from witness-stand and asked to examine the boxes which he did.) And I see there is no way bill reference on the sticker, but it appears to be the original lot sticker that is on it. There is no number on it or the date of the shipment, it has the amount of boxes and that is all. That label shows a money value amounting to \$1,709.50. All the box numbers have a lot number on them. As to whether the marks on the card correspond to the marks on the boxes—here is the difference—it will state—

(Testimony of W. E. Jones.)

this has the first name Dunham, C. & H. abbreviated and just cut off the initials on there of the name, you see. This card indicates the shipment of eight boxes of guns. In my opinion these are the same boxes that I delivered.

Cross-examination.

—These boxes of guns in that shipment came in the regular course of business through my company and I delivered them in the regular course of business at the place where I always delivered goods to Mr. Borgaro in his store, at 11 o'clock in the morning. [78—36]

TESTIMONY OF B. F. HALLIDAY, FOR THE
GOVERNMENT (RECALLED).

B. F. HALLIDAY, a witness for the Government, having been previously sworn, was recalled and testified further as follows:

Direct Examination.

Witness on being asked to examine the invoice of the cases containing rifles shipped by Dunham, Carrigan and Hayden Company of San Francisco to Esteban Borgaro, Jr., at Tucson, Arizona, and state whether there were any identifying marks on the cases that would correspond with the invoice, and whether he could determine that the shipment is the shipment described in the invoice, the witness after having made the examination replied as follows: "This is our case, and that one is ours; that one is ours; that is ours and this is

(Testimony of B. F. Halliday.)

ours." These are the same cases as described in this invoice.

Cross-examination.

As to whether those cases are in the same condition in which they were shipped from San Francisco, that is, with reference to labels and markings and all, that one is—all the casings have the same markings, yes, sir, on that they had. I presume it is a standard box that we use for shipping 30-30 rifles—this, I presume, is a full factory case, ten of these rifles to the case and we just put the shipping mark on them, on the original case we receive. I don't think these cases ever had been in our place. The boxes we receive the ten guns in, if the man orders ten guns in the case; in that case we would use them as the original shipping case, but if it were a repacked case it might be anything,—might be these and might be our own. Those are the original packer's cases and come from the factory and those we would have in our warehouse. We use them and ship them just as we receive them from the factory as a full box is ordered.

Redirect Examination.

I am quite certain we do not keep a record of the numbers of the rifles as they pass through our house—the serial numbers appearing on the rifles.

[79—37]

TESTIMONY OF JOHN J. FARRELL, FOR
THE GOVERNMENT.

JOHN J. FARRELL was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

Direct Examination.

My name is John J. Farrell. I am a deputy sheriff at the present time. I am a deputy sheriff of Pima County, Tuscon, Arizona. [80—38] I have been a deputy sheriff for about three months. Previous to that time I was a Patrol Inspector in the Border Patrol, United States Immigration Service, since 1924. I was acting as Patrol Inspector during the month of June, 1927. I know the defendant, Esteban Borgaro, who is seated by his counsel. I have been acquainted with him about,—well, since along in May. I have been in his store off and on since that time. I became acquainted with him more familiarly along in June, the first part of June. I saw Mr. Borgaro at that time—the 9th day of June, 1927. I saw him at his store. His store is at the corner of Broadway and Meyers Street. He was in the store. I was at his store because I was detailed by Acting Chief Patrol Inspector Lee Caldwell to go up there and watch some arms that was to be delivered there at his store that morning, and that was the reason I was up there. After I was sent up there by Mr. Caldwell, I stationed myself at the Broadway Res-

(Testimony of John J. Farrell.)

restaurant. With reference to his store, that is located—it is about—about a hundred feet from his store, I should judge; just across the street, and a little east—on Broadway; across Broadway, about one hundred feet southeast, on the south side of the street. While I was stationed in front of the Broadway Restaurant, I did observe something. I observed that Mr. Borgaro had received some arms from the Express Company, and that along about one-fifteen, Mr. Borgaro and two or three other gentlemen loaded this—some of those arms. As to whether those arms I saw unloaded were in containers of any kind, they were in boxes. I observed what kind of boxes *there* were in. They were boxes like those standing here when they were unloaded, going into his store, and then when they came out—I would say they were the same kind of boxes that were taken into his store. After the boxes were taken in, Mr. Borgaro left. Well, after they were taken in, I was in the store. I went in the store and was talking to Mr. Borgaro. At that time I saw the boxes. (The witness was then asked by counsel to step down and examine the boxes, and complied.) As to how many of these boxes I saw unloaded, it seems to me that there was six. I don't remember just exactly how many there were unloaded, but there was quite a number of them, those large boxes. After having looked at those boxes, I can state that [81—39] those are the same boxes that I saw in the store. At the time I saw those boxes there, it

(Testimony of John J. Farrell.)

was before the time that any of them had been removed. I held a conversation with Mr. Borgaro at that time; I went in there and bought a pair of spur straps. I did not hold any conversation in reference to these; not in reference to them. After that I went out and went up to the restaurant, this Broadway restaurant, and I waited around, and Mr. Borgaro left and later returned, about one or a little after one,—about one-fifteen, I should judge, he returned, and he took the back seat out of his car and there was another rather large man helped him load some arms into the car. They were in boxes, they were in pasteboard boxes; it seemed like they were tied together, three boxes tied together. As to how many of those he loaded, I think there were about nine. There were nine packages—nine packages of three boxes each. It seems to me I have seen the man who was assisting him before. I believe I could identify him if I were to see him. After the guns were loaded into the car, why, Mr. Borgaro threwed a canvas over the back end, over the arms, and he and another fellow—this large fellow that I am speaking of—got in the car and they started up the engine and got in and started west on Broadway, and turned to the left on Main, going south. They were two or three blocks down south and turned to the left, going east; I don't remember those streets very well. I don't remember the names of them—I wasn't very familiar with them at the time. At that time, Mr. Spence and Mr. Williams were waiting for me on Broad-

(Testimony of John J. Farrell.)

way, just west of Borgaro's store, and I had my car facing west, and when Mr. Borgaro started away, why, I started in behind him and Spence and Mr. Williams got in the car with me and we followed them, about eight or nine or ten blocks, and I don't remember how far it was, and we lost them. At that time Mr. Borgaro was driving about fifty or fifty-five miles an hour. He had a Jewett touring car. I had a Chevrolet. As to how fast we were driving in our car, we had it pressed away down, and must have been going about forty-five—as fast as it would make. While Mr. Borgaro was driving, he was—on every corner he would look back, and in between times he would look back, too, and on Main, after [82—40] we turned to the left on South Main, we could only see him turning the corners—whatever corner we would turn, we—he would be turning the other corner ahead, and he and the other fellow would be looking back, both of them until they outrun us, and ditched us at 19th Street and 6th Avenue. I saw him last on 16th—well, it was—I think it was on 17th Street; 17th and, well, it is Scott Street; it is right there where there is an intersection of Scott and another street. That is the south end of town, in reference to the courtroom. It was right over, close to 19th Street and 6th Avenue, about ten blocks from here, I think. Mr. Borgaro's store is down here (indicating), about five blocks. Before we lost sight of him altogether, we traveled about twelve blocks, the way we went, because

(Testimony of John J. Farrell.)

we went zigzag and turned back, turned on one corner and then go south and then go east, and then south and then east, and then he kept that up until we lost him entirely, and the car we had wasn't fast enough to keep in sight of him.

After that, well, we circled around to see if we could not see his dust somewhere, so we would get his bearings again, which way he went, so as to follow him, and then, as we couldn't find any way to tell just which way he went, so we came back to the office, Border Patrol Office, and told Mr. Caldwell that he had got away from us.

And then after that, Mr. Wren and Mr. Caldwell and myself came up to Mr. Borgaro's store and Mr. Wren told him who he was. At that time Mr. Borgaro wasn't in the first time, when we went there, and so—that was on the same day, in the afternoon, along about three o'clock, or three-thirty, I should judge. We came back later and Mr. Borgaro came in at that time and Mr. Wren told him who he was, and also we told him who we were. Mr. Wren asked him about those guns and arms he had in his store, if he sold them. He said, No. Asked him what he did with those he took out. He said he hadn't taken any out, and Mr. Wren said, "Well, some of the Border Patrol boys seen you take them out, and I want to know what you did with them," and he didn't seem to say much then and finally he admitted selling some, and said they took them out here on Second Avenue, I think it is, some houses out there. So Mr.

(Testimony of John J. Farrell.)

Wren said, "Well, will you show us where you [83—41] took the guns?" He said, "Sure, will be glad to take you out," so we got in the car, and Mr. Wren and Mr. Caldwell and myself and Mr. Borgaro, and rode out practically the same direction in which we went when he got away from us, toward Millville, and just the other side of Millville, southeast, or pretty nearly due east, I should judge, of Millville in a canyon, a little arroyo, and he stopped the car and said, "I delivered the guns right here," he said, "I delivered them to ten or twelve Mexicans, I believe," he said, "in a truck." There was no tracks of any truck or no footprints, foot tracks of any truck or of any men, and we had a talk with him of about a half hour. That is a single track road at that place, and if there had been tracks of a truck or tracks of men I could see it. After we had talked for twenty minutes or so, why, I got out and went around—all around in there, and see whether there was any tracks, foot tracks or any car tracks, but there was no tracks, none whatsoever, in this particular place. I think there was a further statement made there by Mr. Borgaro. He said that he had taken these guns out there, that this man came there to his place of business and wanted him to deliver them out there that he was buying, and Mr. Wren asked him if those guns was to be used for revolutionary purposes, or anything of that kind, and he said at that time that when he was delivering them, after he delivered them out there

(Testimony of John J. Farrell.)

he realized, yes, that they were for revolutionary purposes. Mr. Borgaro stated that he did not know the man who went with him, that he went with those—that he left this man with the truck and came on back. He stated that he came back by himself.

After that we came back to the office with Mr. Borgaro, and I believe Mr. Wren released Mr. Borgaro; in fact, he wasn't under arrest at all at that time. I said we left Mr. Borgaro go after we came back. I might have been present when Mr. Borgaro made further statements, but I don't recall just the particular time. I don't remember just exactly anything else that I did observe. During the month of June, I made some trips to Mesquital, with some of the other Border Patrol officers, and while at Mesquital, I seen [84—42] Mr. Gandara at that place, I believe I saw him there on the 25th of June. Mr. Hays and Mr. Wren were with me at that time. I don't know exactly what Mr. Gandara was doing at Mesquital, but he was there at the Yaqui village, there at Mesquital, and we drove up and his car was there, at a Yaqui's house by the name of Antonio; I don't know what his last name is. He was an old man—his wife was blind, I believe. We had a conversation with Mr. Gandara at that time. When we drove up, Mr. Gandara came out and shook hands with us, and Mr. Wren says, "Well, Mr. Gandara," he says, "I guess you are up against it." He says "Yes, I guess so," he says, "Will you give me a chance," he says, "to go on and speak

(Testimony of John J. Farrell.)

to my lawyers," he says, or "get in touch with my lawyers in El Paso?" and Mr. Wren told him, "No," he says, "I don't know; that is up to you. We haven't got you under arrest yet; we have got lots of time for that," he said. He went on and started telling about this—these arms and ammunition that we had got over there, and he stated to us that they all had belonged to him, that he was the one that furnished them. In reference to the arms and ammunition he was speaking about on that date, he indicated the arms and ammunition that we had gotten there. I don't know whether anything was said about the arms and ammunition before he made the statement, but I think maybe we spoke about those arms and ammunition ourselves, but Mr. Gandara voluntarily stated that he had furnished them. I do know what arms and ammunition those were that I refer to; the day before we had got a search-warrant for the place and found a good deal of ammunition and picked up arms all around the river-bed. There were a great deal of new thirty-thirty rifles and then we got a number of old rifles, too. I think there were right around twenty-five of those new thirty-thirty rifles there, if I remember. We got around twenty-five old ones, too. I believe I would be able to identify those rifles. (Witness is requested by counsel for the Government to examine rifles, which he does and resumes the stand.) These guns were found on June 24th. They were found in the river, along the river bank, over here in Mesquital, and we found

(Testimony of John J. Farrell.)

a good many of them right around in these corrals, where the [85—43] Yaquis had for their horses. That was the day before the day I stated Mr. Gandara made some statements about the guns. Those were the guns that I was referring to and not the guns that were taken up here around Millville. Those were the guns found at Mesquital.

In reference to these particular guns, Mr. Gandara said that he had given the money to a Yaqui and that the Yaqui had bought these guns from Mr. Borgaro. He said that out there at Mesquital; also said that Mr. Borgaro was quite excited over the Yaqui's testimony, over what the Yaqui told him, that Mr. Borgaro was quite excited and if it had not been for the Yaqui that we would have caught Mr. Borgaro that day with the Yaqui, that the Yaqui showed him where to go to get away from us. Mr. Gandara said that Mr. Borgaro was very excited that day that we chased him, on the day that he had those guns, taking them out to the Yaquis, and if it had not been for this Yaqui that was along with him that we would probably have caught him. And Mr. Gandara said that some of those guns were the ones that Mr. Borgaro had brought out there. As to whether Mr. Gandara made any further statement—he also went into this house, this old lady that was blind, this old Yaqui by the name of Antonio, and told them that they could have the grub that he had there; they had about fifty or sixty dollars' worth of grub in the house, that they were going to use for the expedition and he told the old

(Testimony of John J. Farrell.)

folks that they could have that grub—he would give it to them.

As to whether Mr. Gandara stated what this expedition was about, he said that if we hadn't got those arms, or hadn't picked up those arms, that he would have been gone with the Yaquis, that he was going to go personally into Mexico with the Yaquis, and was going to go that night, I believe, the night we were talking to him. He said that he was going to fight the Mexican Government; the Mexican Government had been mistreating everybody and that down there the people didn't have a chance; that they were a very selfish Government and that they were just robbing the people out of their lands and everything they had and that he was going to help these people that were in need. Mr. Gandara's statement was made voluntarily at the time, and was not subjected to any threats. He was not placed under arrest at that time. [86—44]

Cross-examination.

I did not have Mr. Borgaro under arrest at any time. As to whether we took him down to the Border Patrol place, after we had drove out there, yes, we drove on down there with him, and he was there in the office. I don't know as he was kept or not. He was down there; we took him down there. I said that between one-fifteen and one-thirty, when Mr. Borgaro went with this man and loaded the guns in the Jewett car and covered them up with canvas and started up west, that I immediately

(Testimony of John J. Farrell.)

gave chase, and I went ten or twelve blocks, and I saw Mr. Borgaro zigzag and go one block south and then one block west and a block south and a block west and south again. He was going between fifty and fifty-five miles an hour on those streets down there in the south part of town.

At the time I went in and talked with Mr. Borgaro, when I bought my spur straps, those boxes of guns were there at that time. They just looked the same as they do now, and had those "Winchester" arms and tags on them and the signs that are on there, the same tags at that time. I forget just exactly how many boxes I said, but some more. There was six there anyhow, or more. As a matter of fact, there were eight boxes there and they had these same labels on them that they have now. I knew they were rifles from the labels. I did not see them loaded into the store from the American Express Company. I had not seen them down at the depot myself before that. Then I went on back and went on watch there again at the restaurant, and Mr. Spence and Mr. Williams were down in the middle of the next block so that when Mr. Borgaro went down to Main Street, going west, he passed right by Mr. Spence and Mr. Williams. As to whether they got a better look at things there than I did, they got a good look at them. And when I came down there, they got in my car and then we started on this chase. I had seen that man who was helping Mr. Borgaro, I had seen him before—recognized him as a man I had seen before.

(Testimony of John J. Farrell.)

I didn't know him, but I knew him by sight.

I said that Mr. Borgaro took us out to where he said he had delivered these guns to the Mexicans in a trunk, and he told Mr. Wren [87—45] at that time that after that delivery that he realized that these might be used for revolutionary purposes. These are the guns that I found out there at Mesquital on the 24th of June; that is, the ones that are loose over there, lying on the floor; those are the guns I said that Mr. Gandara said he had bought from Mr. Borgaro—the new ones are—not the old ones. The new ones. As to whether I meant what I said a while ago, that these were the guns that Mr. Gandara said were the ones he bought from Mr. Borgaro,—he said the new thirty-thirty rifles were the ones. That is what Mr. Gandara said.

I haven't traded with Mr. Borgaro down there for a number of years; I believe the spur straps I bought are the only things I ever bought. I have been in the store quite often. I know that Mr. Borgaro handles rifles and shotguns and ammunition and supplies and carries on a general store there. As to whether it is quite a busy corner, I don't know whether he sells much there or not; I don't see many in there very often, but he may have a good business there. He has a good stock of goods. His store is wide open there. Broadway is one of the wide streets that lead down to Main Street. Meyers is the main business street of that part of town, and both of these streets are paved streets.

(Testimony of John J. Farrell.)

I said that I got these down there at Mesquital on the 24th of June. That was along in the afternoon—along in the evening, about five or six, or it may have been around seven; we were hunting them away after dark, to find them. And we got some of these guns there at Molino's place, Antonio Molino—that is Antonio, the husband of this blind woman—just this side of his place—to the left on the river banks, and all along that river bank we found the new guns. We would dig them up, one at a time, and the old guns, we found, I think there were twenty-some-odd, we found buried together in a big box right in the middle of a corral. Right this side of Antonio's corral. As to whether we found any guns in Mr. Felix's place, we found some right on the river bank. These houses are on the river bank, just to the left of the road. I believe one of the boys did find one in Antonio's chicken-coop; it was an old rifle that they found in Antonio's house, [88—46] in the chicken-coop. It was the next day after we got those guns down there that we had this talk with Mr. Gandara. I suppose the Yaquis must have told him what guns we had taken away. The way it happened, when we went up there he came out and shook hands with us and Mr. Wren said something like this, "Well, we have got you," in something like a joking way, and he said, "Yes." "Well," he said, "That is the way it goes," he said. As to whether it was then that he told us that he had bought these guns from Borgaro, in his conversa-

(Testimony of John J. Farrell.)

tion, he brought that up in his conversation, and Mr. Wren stated, in a joking way, kidding him, "Very well; we have got you," or something like that. As to whether he kidded Mr. Wren back, well, they smiled. He did, in the way he took it. There was a lot of kidding there. Mr. Hays was also there. He was not one of the members of the Border Patrol; he was of the Department of Justice at that time. I was with the Border Patrol at this time, during all of this time that we have been talking of. I wore the uniform of the Border Patrol. I did not have the uniform on when I bought my spur straps. I didn't have my uniform on that day.

I have known Mr. Borgaro since along in May. I came here and worked in Tucson for the Border Patrol along in March. I did not wear my uniform right along; not altogether. I met Mr. Borgaro with my uniform on. At the time I went in the store I didn't have my uniform on. At that time he did not know I was a member of the Border Patrol at the time I went in his store, I went to buy my spur straps, because he asked me where my ranch was, he did not know me. I don't believe he had ever seen me with my uniform on. He didn't know I was a member of the Border Patrol.

Redirect Examination.

We found something else at Mesquital at the time these rifles were found. We found canteens and we found about, right close to ten thousand rounds

(Testimony of John J. Farrell.)

of ammunition. Mr. Gandara said that he had bought the canteens. He said that he had bought the ammunition, too. I believe I could identify these canteens and the ammunition. We found the ammunition in sacks, some of it; some of it was found in boxes, the cartridges, tied together, five and six boxes at a time, and we [89—47] found the ammunition in cartridge belts they had made out of canvas, so they could carry it around their bodies, you know. We found a good deal of these "araches," these shoes, you know, they were, and we found some knives. All of these things were buried. Mr. Gandara did not make any statement concerning the various articles found, the knives and sandals, and so forth, just the rifles and the canteens and the grub, is all that he spoke of, and the ammunition.

(After recess.)

During the interim, I have examined these various articles. All these were the things we found at Mesquital during the time I have previously described. Jose Gandara made a statement about furnishing the new canteens and the ammunition and the canvas from which they made the belts out of.

Recross-examination.

I examined all that stuff pretty thoroughly. In my opinion there is some of that stuff that came from Mexico. That belt came from Mexico, but has been fixed, over on this side, with the canvas.

There is a lot of those old guns that probably came

(Testimony of John J. Farrell.)

from Mexico. This belt is from Mexico, but the cartridges are not. (The witness was here requested by counsel to pick out all of the articles which, in his judgment or from his knowledge, came from Mexico, as well as the guns, and to place them in a pile, which he did.) I could not identify this sack, whether it is a Mexican sack or made on this side. It is old; that is an United States sack here. There are none of these cartridges that are Mexican cartridges. I examined the different packages of cartridges; they are all United States, some of them are Winchesters and some Peters. (The witness was here asked to examine the guns, which he did and sorted the new from the old, stating the old had come from Mexico, and was then asked to examine the cartridges in the pasteboard box which Mr. Hilzinger had and see if he could identify any of them as Mexican cartridges. The witness examined the cartridges.) I could not find any Mexican ammunition there. I would not say it was Mexican ammunition. They have some that may have come from there. There is some cartridges here that looks like as if they have been used; I don't know whether they came from Mexico or [90—48] not; look like German ammunition here. I don't see any F. N. C. ammunition here—there is one—just an empty shell of the F. N. C. I don't know just what that means. I don't know where they found that pasteboard box with its contents; I think that they must have found it at the Border Patrol and they must have been put in it. We

(Testimony of John J. Farrell.)

found all that stuff in sacks, loose. These sacks and the like things were not in any of the houses there; well, some of the "araches" we found were on the outside, along the adobe wall on the outside of the house. None of this stuff was found in any of the houses there. I believe one gun was found in one of the houses. That thirty-thirty was found inside of that chicken-coop place.

Redirect Examination.

I have examined the contents of this bag. All these cartridges came from the United States. These things, this canvas here came from the United States; that leather there is a Mexican leather; that is Mexican; that came from Mexico, that leather there. The cartridges are United States, made in the United States. That is new ammunition in these belts. These belts here were made by the Yaquis at Mesquital out of that canvas. There is another belt come from Mexico, but the cartridges are from the United States. These were all buried in the ground. When ammunition is buried, it will get green like that.

I have observed and had occasion to handle ammunition—that is, caring for it—during the time I was an officer. My experience about coating on ammunition would show that when ammunition gets wet, it coats green. There is a coating comes on it and it will stick in the gun. When it is kept in good shape and kept from getting wet and dirty, why it is nice and clean. The caliber of those rifles

(Testimony of John J. Farrell.)

that I have picked out here is thirty-thirty; Winchester, thirty-thirty, carbiné. There is some thirty-thirty rifles in there and some seven millimeter and Mausers, German Mauser, some Krag, some thirty-forties and I believe there is a .250 — there too. As to the caliber of the ammunition found—we found thirty-thirty Winchester cartridges and seven millimeter Mauser cartridges and thirty-forties, that is [91—49] about all. Seven millimeter and their thirty-thirties and thirty-forties. I did not have any conversation with Mr. Gandara in reference to this canvas, only he said that he furnished the cartridges and the canvas and the canteens, and so on and so forth. In a general conversation he spoke, said that he had furnished the ammunition and the rifles and said the new rifles, I should judge, and the canteens and the canvas, and so on. I examined the canvas, the weight of the canvas out of which the belts are made and the little piece laying on top of the pile. As to what I would say as to its weight—whether it is the same piece, here is the piece of canvas (picking up another piece) they was making the belts out of. That large piece is about the same weight of canvas. [92—50]

TESTIMONY OF FRED RYAN, FOR THE GOVERNMENT.

FRED RYAN was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

(Testimony of Fred Ryan.)

Direct Examination.

My name is Fred Ryan. I live in El Paso, Texas. I have resided there going on five years and am sales manager for Momsen, Dunnegan & Ryan Company. As sales manager I have the handling and managing of the orders of that firm and have charge of the records. During the month of June, 1927, we received an order for ammunition from Esteban Borgaro, Jr., of Tucson, Arizona, and I have the original records relating to the order placed by him at that time. The order received from Mr. Borgaro was telephoned from Tucson by long distance telephone by Mr. Cobb to our Mr. Galbraith. Mr. Cobb is a southwestern representative for the Remington Arms Company. The telephone message was received by Mr. Galbraith, who is in charge of the ammunition and arms department. This order was filled and shipped to Mr. Borgaro of 22,000 rounds of 30-30 cartridges and 1,000 rounds of 30-40 cartridges. The shipment was made by freight over the Southern Pacific Railroad of Remington cartridges, which is the only line we handle. This is the original record, the original order made at the time the telephone message was received (Here the order was offered and introduced in evidence.) I don't think that I could identify any of the boxes that left our house by any markings on the order. I imagine that it would go out like just any other shipment in the Remington case. We do not put any number on the boxes unless it is an order that calls for the

(Testimony of Fred Ryan.)

order number to be put on the case, which occurs occasionally where organizations have their own order number and request us to put it on the case. Otherwise we just put the address and the name of the firm to be shipped to and ship it. If I saw the cases I don't know whether I would be able to determine whether they were shipped by my firm.

Mr. Borgaro has placed other orders for ammunition with my concern.

There are no other orders in my files from Mr. Borgaro as large as this order. There is one order I think for 1,000 30-30 cartridges. There is another order for one tenth of a thousand of 30-30. [93—51]

Cross-examination.

There was one order placed for \$850.00 and the amount of the other order was twenty-three thousand—I think it was approximated, at our credit department at about \$1,200.00. All these orders that I have mentioned as coming from Mr. Borgaro at my house were in the regular course of business. We have always had an account with Mr. Borgaro, that is, not always, but for quite awhile. The shipments were all made in the regular course of business by freight. The boxes were marked Winchester or Remington, or whatever they were, cartridges. No effort was made to conceal them in any manner, shape, or form and Mr. Borgaro's name was on the boxes. [94—52]

TESTIMONY OF A. E. BROWN, FOR THE
GOVERNMENT.

A. E. BROWN was thereupon called by and for and on behalf of the Government and was first duly sworn and testified substantially as follows:

Direct Examination.

My name is A. E. Brown and I live in Tucson. I have lived here seven years and am assistant cashier of the Southern Pacific Railroad which position I have occupied about four years. I was on active duty during the month of June, 1927. I am not acquainted with Esteban Borgaro, the man sitting by his counsel there. As assistant cashier of the Southern Pacific Company I have under my control records showing shipments received by the Southern Pacific Company. I have the records here relating to a shipment consisting of 23,000 rounds of cartridges consigned by Momsen, Dunnegan & Ryan Company of El Paso to Esteban Borgaro of Tucson, Arizona. This is the original record showing the shipment of twenty-three boxes of small arms ammunition. This is a receipt for delivery portion of the freight bill. (At this point for the purpose of saving time defendant's counsel admitted as having been proved that said 23,000 rounds of ammunition was received by the Southern Pacific Company at their Freight Depot at Tucson, Arizona, was delivered by the Southern Pacific Company to the Fickett Transfer Company at the request of Mr. Borgaro and delivered by the said Fickett Transfer

(Testimony of A. E. Brown.)

Company to Mr. Borgaro's place of business in Tucson, Arizona. It was further admitted by defendant's counsel at this time that said shipment of 23,000 rounds of cartridges was fully identified by witness A. E. Brown and by the driver of said Fickett Transfer Company.) [95—53]

TESTIMONY OF C. S. FARRAR, FOR THE GOVERNMENT.

C. S. FARRAR was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

Direct Examination.

My name is C. S. Farrar. At the present time I am living at Casa Grande. [96—54]

During the months of May and June, 1927, I was stationed at Sells, Arizona, at the Indian Oasis. I am patrol inspector in the Border Patrol, Immigration Service. I have been connected with that ever since the Border Patrol was organized. That was about four years ago, I guess, going on four years. I was on duty as Border Patrolman during the months of May and June, 1927. I know Mr. Gandara, who is sitting here. I seen him in June, 1927. The first time I saw him was here in Tucson. I did not have a conversation with Mr. Gandara at that time. Not at that time. I have, later. I don't know whether in August or September, I talked with Mr. Gandara out at Sells, Arizona.

(Testimony of C. S. Farrar.)

He made a statement at that time. That was at Sells, Arizona. I believe it was in September—I would not be positive. There was present Mr. Gandara and Mr. (?) and another fellow, a writer for the "Saturday Evening Post," was there in their car, and myself and I don't know who else was around the store there. We talked about different things and I asked him about this case here and he said, "What could I do? They caught me." That is all he said about it.

I know where Mesquital is located. I have visited Mesquital. The first time I had occasion to be down there was in June, the 23d. My purpose in going there was looking for arms and ammunition. I found some. We found, I should judge, about forty—between forty and fifty rifles, I don't know which—I don't know and I don't remember the number of shells, but quite a number of them. The shells and rifles were found within a radius of a few feet of these Indian houses down there, Antonio Molino and Feliz and Juan Alvarez, I guess his name is. They were buried in different places, around in the corrals and yards and different places, along the edge of the river. (The witness was here asked by counsel to examine the rifles and the other stuff there, which he did.) These are the rifles and that is the equipment, and those boxes—these rifles and all this equipment here, these belts and cartridges and cartridge belts and this stuff in these sacks, those canteens over there, were all found down there. These boxes and this box (the little

(Testimony of C. S. Farrar.)

one) I don't know anything about them; I never saw them. I did not talk to Mr. Gandara about any of these [97—55] things that were found at Mesquital. As to where the new guns were found and where the old ones were found, they were buried in different places there, some new ones and old ones. Two of them were buried, a single rifle in a place, wrapped up in some canvas—burlap—and the rest of them, all were buried collectively; there probably would be four or five buried in one place and I believe sixteen in one place, and the rest of them were buried two or three in a place and some had only one in a place. Some of the new rifles and the old rifles were together. It was kind of an excavation made there, with some boards laid over it, and then dirt and stuff throwed over the top of these boards, all buried down in there together. They were all buried. The ammunition was buried too. The canteens were found in different places there, buried.

I am not acquainted with Mr. Borgaro; I just know him. I never saw the defendant Gandara at Mesquital at any time. I am not acquainted with Chito Valenzuela. I have never had any conversation with Mr. Gandara in reference to Chito Valenzuela. The ammunition and the guns that we recovered there were brought to the Patrol Headquarters down here. They were checked there and left there until brought up here. They were locked up.

(Testimony of C. S. Farrar.)

Cross-examination.

None of these rifles were found in any of the houses there. None of the ammunition. None of the goods at all, none of this material, was found up there. Nothing but a lot of provisions was found in a house. They were buried near the houses of Antonio Molino and Feliz and Alvarez. Some of the guns were wrapped up in burlap or canvas; some of them were buried in holes with boards over the top; the others were just buried in the ground, no boards over them. Most of them were wrapped up. [98—56]

TESTIMONY OF JOE CURRY, FOR THE
GOVERNMENT.

JOE CURRY was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

Direct Examination.

My name is Joe Curry. At present I live at Amado and during the months of May and June I lived at Sells. I am a patrol inspector and have been such almost two years and was acting in that capacity during May and June, 1927.

I am not acquainted with Jose Gandara; nor am I acquainted with Esteban Borgaro.

I know where the village of Mesquital is; it is on the Santa Cruz River, about four miles south of Tucson.

(Testimony of Joe Curry.)

I had occasion during either May or June, 1927, to visit Mesquital. I went out there with Patrol Inspectors Farrar and Farrell and Murchison to make a search for arms and ammunition.

We found a number of guns, lots of ammunition and canteens, knives, cartridge belts and Yaqui equipment of all kinds. I believe there were somewhere near fifty guns; there may have been sixty—I don't remember the exact number. There were around twenty or twenty-five thousand cartridges. I don't remember just how many—several sacks full and boxes and several— Oh, a big load of that. The majority of it was found buried alongside of those houses, buried on the edge of the river. We would find a gun buried here and the ammunition there, and most of it was pretty well scattered along that river edge. Some of the guns were buried together in places; sometimes there would be only one gun and sometimes two; and then there were twelve to fifteen buried in a place, and then others were buried within a few feet of each other. I would state that the stuff down there (indicating), guns, canteens, etc., is the same stuff that we found at Mesquital. As nearly as I can remember we found it the day before San Juan's Day, the 23d of June.

(The witness was not cross-examined.) [99—57]

TESTIMONY OF JOSE ESTEBAN RIVERAS,
FOR THE GOVERNMENT.

JOSE ESTEBAN RIVERAS was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

Direct Examination.

My name is Jose Esteban Riveras. I am a Yaqui. I live at the town they call Bacum. Bacum is below Copra. I lived at Mesquital for a long time. As to whether I was living there on San Juan's Day, on the 10th of May, I came down here. I was at Mesquital on San Juan's Day. That is this year.

I know Jose Gandara. I only know Bishop Juan Navarette by sight. I saw Jose Gandara at Mesquital. That was on San Juan's Day. He was only talking there; we were listening to him. He says he wanted to go down to the river—the Yaqui River. He said nothing more about rifles or ammunition than he brought some ammunition to Mesquital. He talked there, but I am a Yaqui; I cannot understand Spanish very well. I understood some words of what he was saying. He said that he was going with the Yaquis to the Yaqui River; that is all that I heard. As to whether he said anything about guns or ammunition, he said something like that, to take it to the Yaquis. I have seen Bishop Navarette, the man who is sitting there. I saw him at Mesquital, and during the night.

(Testimony of Jose Esteban Riveras.)

Somewheres along about ten o'clock. Gandara came to Mesquital with him. Bishop Navarette said something to the Yaquis. He was talking about making peace and living quiet with the Yaquis. He wanted to help us, help the Yaquis to go there and live peaceable, he said.

Bishop Navarette said something to the Yaquis about guns and ammunition. I understood a little what the Bishop said when he talked about guns and ammunition. I understand that word that he said, that Gandara was going with the Yaquis to the Yaqui River. That is all that I heard.

I don't know Esteban Borgaro, the man who is seated over there. I have never seen him before.

Jose Gandara would come to Mesquital, I cannot say how many times he came there, but he was coming there. He came many times. [100—58]

Cross-examination.

I came to the United States the last time on the 10th of May. I remained down in the Yaqui Valley for some time. I remained there the last time eight months. I was fighting down there. Five men came back to the United States with me in May—only one family. And we were armed at the time that we came across. (The witness was asked by counsel to look in that bunch of old guns and pick out the guns that they had, if he could, and he replied:) My rifle, I throwed it away because it was too old.

I was born down in the Yaqui country. During

(Testimony of Jose Esteban Riveras.)

the course of the last ten years I have been going and coming all of the time. I would go down to the Yaqui Valley and fight a while and then come back to the United States, get some money, provisions, ammunition and rifle, and go back and fight some more. Only two times, I did that. I went the first time the year before last. I have been in the United States for twenty-eight years. I am thirty-two years old.

About eight or ten months ago I went down there again, when we hear there was peace down in the River Yaqui, I was working here and I live here and I went down to the Yaqui. As to whether I started fighting when I got down there, I was working for them farmers down there and when the revolution started I remained down there for a month. As to whether, during that month, I fought with my people against the Mexican government, I only went down there with my family and I was working to provide for my family, and then I came back with my family to the United States. After I brought my family here, I never went back to Mexico no more; we came back here in May. There was a revolution down there at that time, when I left the Yaqui country. I had been fighting with them one month only. Five other men came with me. They are Yaquis. They had been fighting down there against the Mexican government. They were coming up to Tucson to work, and they were going back there again to fight. I was not going back with them because I was living here.

(Testimony of Jose Esteban Riveras.)

The meeting was held at Molino's house, there was some at Molino's house. I was with Francisco Feliz, when I saw the people coming over there. As to whether I was living with Francisco Feliz, he is my [101—59] uncle. I am related to Antonio Molino. All the Yaquis are related to one another. Antonio Molino is my parent, because he is a Yaqui, As to whether he told me what to come here and say, we came here with him. We only come with him. He didn't tell me what to say here. As to whether I talked about the case with him at all, Antonio Molino, the people was over there and they had their meetings over at Antonio Molino's—that is all that I know.

As to how many meetings I went to out there, either at the house of Molino or Francisco, I was at the house of Francisco Feliz when the people would come there. The people would come to Francisco Feliz was the Yaquis that come from the Yaqui River. Yoris did not come there, nothing but Yaquis. The priest came to Francisco Feliz's house and he remained there just a little while and then he went away again. It was dark that night, it was late in the night and I was asleep and I didn't see anything. I didn't hear anything, only what I said. I was asleep. This speech was not made inside of a house, his talk on the one side of the house, and there were no lights there. I never saw the Bishop before in my life, and I did not get a look at him that night, I did not see him. As to whether I know this is the gentleman who was there that night,

(Testimony of Jose Esteban Riveras.)

which one? This one? (Indicating.) Yes, he was there (indicating Mr. Wren). This man would come there. He would make no speeches. He didn't make a speech there too—wasn't saying anything. He just came there, was all. I heard the Bishop say that word only. He said that he wanted to make peace for the Yaquis because the Yaquis had been suffering for a long time. He said that he wanted to make peace, to live happy. That is all.

It was Gandara who said they were going to take arms and ammunition down there; it wasn't the Bishop. He was going down there with the Yaquis, when they put on their araches and started over there he says. That wasn't Gandara. I heard him. As to who it was, only one went—he says no one went back there.

As to whether I was there at meetings where Alfonso de la Huerta came there and made speeches also, he came there very drunk and he had a gallon of mescal and he would pass it around, trying to invite [102—60] the Yaquis to drink some of that mescal, and they refused to take a drink. He talked a little, but he couldn't talk very much, because he was drunk. There was some man came there with him that I did not know. They were sitting in their machines. They never got off of their car. Alfonso de la Huerta remained sitting down there. The Yaquis did not want to talk to him because he was drunk. And he told the Yaquis that he was going to give them arms and ammuni-

(Testimony of Jose Esteban Riveras.)

tion; he talked something like that there, but the Yaquis did not want to have anything to do with him because he was crazy drunk. As a matter of fact he did not send these canteens out there. Gandara brought these out there. He brought them out there the first time. Gandara told us that he wanted to go back with us Yaquis to Mexico. All the men that he could gather around there were going with him, and they were all the Yaquis who had come up from Mexico, who had been fighting there before. I don't know the day or the date when the Bishop was out there. When the Bishop came there, I was asleep, and the next morning, when I woke up, these people like Antonio Molino and Francisco Feliz told me that the Bishop had been there and told me what he said.

Redirect Examination.

As to whether I was awake while the Bishop was there, I heard a few words of what he said. I was awake some of the time while he was there, and I heard him talk myself, a little.

As to whether I told Mr. Hilzinger that I heard Alfonso de la Huerta make a speech down there, he didn't talk anything. I don't think I heard him say anything about the Bishop. There was about nine Yaquis at Mesquital while de la Huerta was there. There were no Mexicans there.

Recross-examination.

As to whether I am related to Guadalupe Flores, my uncle, he is only an acquaintance of mine. Fran-

(Testimony of Jose Esteban Riveras.)

cisco Feliz is my uncle. As to my telling you a while ago that when the Bishop came I was asleep, yes, I was asleep, but, he said, I heard a few words that he talked about. I heard it in my sleep. I heard him when he was talking; I [103—61] didn't get up, but I heard him when he was talking; I was lying down. I was outside the house; I was on one side of the house, on the ground. All that I heard is that the Bishop said that the Yaquis had been fighting down there for a long time and he wanted to make peace, and he wanted to send Gandara down there with the Yaquis. Gandara is the one that brought the ammunition there. The Bishop did not say anything about ammunition or guns, that is all he said, what I have told you.

Redirect Examination.

The last time I saw Jose Gandara is the time he came to Francisco Feliz's house. That was in June.

TESTIMONY OF JESUS RIVERAS, FOR THE GOVERNMENT.

JESUS RIVERAS was thereupon called as a witness for and on behalf of the Government, and was first duly sworn and testified substantially as follows:

My name is Jesus Riveras. I am a Yaqui. I live here. I have lived in Mesquital. I lived there some time ago. I lived in Mesquital during the months of May and June of this year.

(Testimony of Jesus Riveras.)

I have seen Jose Gandara, the man who is seated there, at Mesquital. One time that he came there I saw him. That was after San Juan's Day. He talked to the Yaquis. He talked to the Yaquis and told them he wanted to help them and take them back to the Yaqui River. I only heard those words that I have just said, because I was far away from him at the time.

I have seen Bishop Juan Navarette, the man who is seated back there, at Mesquital. I saw him in the night-time. He talked to the Yaquis at that time. He also wanted to go with them down there. That is all that I heard. As to whether he said anything about guns and ammunition, only the ones that they brought there when they came, he says, that is all the guns and ammunition I saw. Gandara brought them down. Gandara told the Yaquis that the arms and ammunition were to have war over there on the other side, with the Mexicans. I didn't count them, but there was only a few Yaquis there at Mesquital when the Bishop talked to them.

Cross-examination.

I am eighteen years old. I know Francisco Feliz. He is a [104—62] relation of mine, and I was living in his house. I know Antonio Molino. I know Guadalupe Flores. As to which one of those three men it was that told me to come here and say that the Bishop said that he was going to lead the army down there, they didn't tell me anything. As to what the Bishop said, I didn't hear

(Testimony of Jesus Riveras.)

anything, I just saw him. I was not quite a distance away when the Bishop came there that night, I was at the house. I was about as far as those men are. I just saw him, I didn't hear anything he said. I didn't hear him.

Redirect Examination.

I said that I was about as far away as those men when the Bishop was talking. I mean the men on this side of the railing; that would be about fifteen feet. I heard the Bishop talking a little, and he was talking in Spanish. He was talking a little loud. He was talking to those men who were there, but he didn't count them. I could hear some, but I couldn't hear him very well. I heard some of the things that the Bishop said. I heard him say something about rifles and ammunition.

Recross-examination.

As to what I meant when I told you, a few minutes ago, that I did not hear the Bishop, I don't speak Spanish, I heard a little that the Bishop said, that he wanted to take them to the Rio Yaqui. The Bishop said that he, himself, was going to take the Yaquis down to the Yaqui country and fight the Mexican Government, that is what I mean, and he was going to lead the men that were there that night, and they were going to start out that night, and they were going down to capture Nogales, and the Bishop said that, and then he said they were going down to capture Hermosillo, and then they were going down to Guaymas, and after that we

(Testimony of Jesus Riveras.)

were all going to take a boat and sail into the city of Mexico. I don't know what we were going to do after that, we were just going there. He said he was going to capture Calles and hang him, and we were also going to get Obregon and do the same thing, and after that I don't know if the Bishop was to become President of Mexico. He didn't say that.

I came to the United States in May. I have been fighting [105—63] down in the Yaqui country, and I came up with my father, Jose Esteban Riveras; there were many fighting down there before. I had been fighting for about a month and we were coming up here to get ammunition to go back there and fight. I had been fighting with the Mexicans just a little and then I came with my father. As to whether I am the boy that killed General Armenta, I think there were others, not myself. I was in that battle and I have taken a few shots at the Mexicans myself. I had a gun with me. I cannot pick out the gun, in this bunch of guns that have been identified here as the gun that I brought back with me from Mexico. I don't see it there.

I saw Alfonso de la Huerta out there at Mesquital, and he came out there one night and made a speech and the Yaquis agreed to go back to Mexico then with him. Alfonso de la Huerta was the man who told them he would give them the arms and ammunition.

Redirect Examination.

When Alfonso de la Huerta talked to the Yaquis,

(Testimony of Jesus Riveras.)

he said something about the Bishop. He said that he would take them to Mexico; he said that he would take the Yaquis to Mexico. As to what he said about the Bishop, he spoke, but I could not hear him very well. He said something about Gandara. He said that Gandara would go with them to the mountains.

TESTIMONY OF FAUSTINA OLIVAS, FOR THE GOVERNMENT.

FAUSTINA OLIVAS was thereupon called as a witness by and for and on behalf of the Government and was duly sworn and testified substantially as follows:

My name is Faustina. I am a Yaqui. I live at Rio Yaqui. I have been in the United States some time. I was not living in the United States about San Juan's Day. I was living in the United States before that time. I have never seen that man (indicating Mr. Esteban Borgaro). I have never seen him before. I never saw him. I was living at Mesquital before San Juan's Day. I saw some guns or ammunition down there. I saw somebody bring some ammunition to Mesquital. I know who brought that ammunition down there. That man there brought it (indicating). There was somebody with him. There are many here, I don't know exactly who. When that man brought the ammunition down, he took it to Silas'. I saw somebody bring some guns down. The man [106—64] brought the guns. He brought them down in the

(Testimony of Faustina Olivas.)

machine. He took them over to Silas'. He took them to Mesquital. I know whose house he took the guns to. To Silas'. That was before San Juan's Day. He carried the rifles to Mesquital in the machine. There was no one with him. He took the rifles out of the machine. Silas is a short man. He is a Yaqui. I don't know his other name. He is a middle-aged man. Silas is his Yaqui name. It was night and I could not see which man sitting down it was took the rifles down there. It was at night when he brought the rifles down there in the machine. I saw rifles brought down there just once. I do not know how many rifles this man brought down. As to whether they were old rifles or new rifles, they were mixed. They were packed in boxes, in pasteboard boxes. There were various, several pasteboard boxes. Silas lives in Mesquital. I know where the house of Francisco Feliz is. As to which direction it is from Francisco Feliz's house, north or south, it is where I live. I live in the same house. I live near Silas. I know Antonio Molino. As to how far Silas lives from his house, it is the same man. And I saw this man deliver the rifles to Antonio Molino's house. The man who brought the rifles down was a Mexican.

Cross-examination.

The Mexican did not come around at night. I don't remember when—it was in the day time. As to what I meant when I said they came at night—I forgot. That is all I forgot. I didn't notice very well if the Bishop, who is standing up for identifica-

(Testimony of Faustina Olivas.)

tion, brought the ammunition. I did see the man that brought the ammunition, but I was busy and I did not notice him. I could not identify him now. That man, Antonio Molino, did not go out and help unload the rifles; he was not there—he was busy. He was over quite a way from there, a quarter of a mile from there, working. And Antonio Molino was not there at all when those guns were delivered, that is the truth.

Redirect Examination.

Antonio Molino returned to his house that day in the afternoon. [107—65]

TESTIMONY OF JOSE JUAN SANCHEZ, FOR THE GOVERNMENT.

JOSE JUAN SANCHEZ was thereupon called by and for and on behalf of the Government as a witness, and was duly sworn and testified substantially as follows:

Direct Examination.

My name is Jose Juan Sanchez. I am a Yaqui. I live here. I know where Mesquital is. I have lived at Mesquital. I have lived there at other times, during peaceful times. I was living at Mesquital on San Juan's Day. I don't know this man seated there, this man with the light suit. As to whether I ever saw him at Mesquital, one night they were at Mesquital but I didn't know who they were. There were two of them at Mesquital that night. I do not know who the other man was. He was a priest. As to whether the priest said anything to

(Testimony of Jose Juan Sanchez.)

the Yaquis, he made them make the sign of the cross. He didn't say anything else. He also said to the Yaquis that he was going to help them so they could go back to their lands at the Rio. That was all that he said. As to how he was going to help them go back to their lands, he said he would give them arms and ammunition. I have never seen that man before who is sitting by those boxes (indicating Bishop Navarette).

Cross-examination.

As a matter of fact, I never saw the priest that night, myself, at all, and I did not hear him say a word.

Redirect Examination.

As to what I meant when I told you that a priest had talked to the Yaquis; at night when he came. I did hear him talk.

TESTIMONY OF JACINTA FELIZ, FOR THE GOVERNMENT.

JACINTA FELIZ was thereupon called as a witness by and for and on behalf of the Government, and was duly sworn and testified substantially as follows:

Direct Examination.

My name is Jacinta Feliz. I live over at Manning's ranch. Mesquital is there. I have lived there a long time, since I was a child. As to whether I was living there in the months of May and June of this year, I have always lived there.

(Testimony of Jacinta Feliz.)

I know Jose Gandara. I don't see him now. I don't see him. [108—66] As to whether anybody has come down to the town at Mesquital in the last few days, only those who are living with them. Gandara was there. I had not seen him there before until the people started to come. I don't know how many times I have seen him at Mesquital, altogether, because they were with the men and they were home.

I have never seen the man seated by the boxes before (indicating Bishop Navarette). I have seen that man before who has his hand over his mouth. He is Gandara. I had seen him at Mesquital before. I don't know what he was doing at Mesquital—he was with the men. As to who was the man that was there with Gandara, some of the men who were there. The men were doing nothing, those that had come from over there.

I have never seen the man seated back there, with the blue suit on. (Indicating Mr. Borgaro.)

Gandara was down there a few days ago at Mesquital, when there were people there. I don't know what he was doing there at that time; he was with those people. He didn't talk to us. [109—67]

TESTIMONY OF G. V. HAYS, FOR THE GOVERNMENT.

G. V. HAYS was thereupon called by and as a witness for and on behalf of the Government and was first duly sworn and testified substantially as follows:

(Testimony of G. V. Hays.)

Direct Examination.

My name is G. V. Hays. I was engaged as an agent of the Department of Justice for a little more than three years, and was so acting during the months of May and June of this year. I am acquainted with Jose Gandara. He is the gentleman sitting next to Mr. Barry, his counsel. I am not acquainted with Esteban Borgaro.

The first time I ever saw Mr. Gandara was in El Paso in the Department of Justice office, probably along the first part of June. There was present Special Agent, John K. Wren and Special Agent in Charge, R. H. Colvin. Mr. Gandara had been requested by telephone to come to the office, and in answer to the summons came up there. He was asked what connection he had with a shipment of arms and ammunition at Nogales, Arizona, and at that time he said he had no connection with those arms that were in Nogales and he was further informed by Mr. Colvin that some information had leaked out that he was connected with certain revolutionary activities, and he was warned by Mr. Colvin at that time to be careful what he was doing.

I next saw Mr. Gandara some few nights after that, I don't recall just how many, but it was in the Union Depot at El Paso, Texas, on the 23d of June, as I remember now. Mr. Wren and myself were together when we met Mr. Gandara there. We asked him where he was going, and he said that he was on his way, he thought, to Phoenix, but he might get off the train at Tucson. After we got on

(Testimony of G. V. Hays.)

the train, we had a very lengthy conversation, Mr. Wren, Mr. Gandara and myself. Mr. Gandara gave us a rather long statement about conditions in Mexico. My recollection is that he said the Mexican government was corrupt and that he was in sympathy with any movement opposed to that government. He told us also that he had attended a meeting of Yaqui Indians south of Tucson at which one, Alfonso de la Huerta, was present; that he, Mr. Gandara, hid himself and his presence was [110—68] unknown to de la Huerta, and he heard himself discussed at this meeting and that the discussion was not favorable to him, but that Mr. de la Huerta did not remain there long, and after de la Huerta left, Mr. Gandara came out of hiding and had a talk with the Indians himself. That is the substance of what he told us; of course, the thing was gone over and repeated several times during the course of the conversation.

I next saw Mr. Gandara the following day, in the evening, at the Yaqui village of Mesquital, about six or seven miles south of Tucson. Mr. Wren and myself were together at that time, and there was also one of the members of the Border Patrol. At that time Mr. Gandara made a statement. He said, almost in these words, "Gentlemen, I was expecting you." Mr. Wren spoke to him aside first and then later we had a talk there together at the house of Antonio Molino, one of the members of the village down there, and Mr. Gandara at that time said that he was equipping the Yaquis for an ex-

(Testimony of G. V. Hays.)

pedition against Mexico, that he was leading this expedition himself, and he said further that he had personally brought ammunition there with which to help arm these Yaquis, and provisions which they were to take on the trip; that he was going with the expedition. They were all going on foot and that he had been hiking in the hills for the past two or three months, to condition himself for this long hike to Mexico; that they would cross at the Border, wherever they could get across, and were going on down into the Rio Yaqui country, join up with the Yaqui Indians in Mexico and when they got there, why, business was going to pick up right away.

Gandara said they had made plans to leave on the 18th of June and that some of the Yaquis out there demurred on going on that date because they wanted to wait for some more members of the tribe, and that they had next set the date of June 25th to go and would have gone if the expedition had not been broken up. He made no further statement right at that time. He did not make a statement at that time or in my presence as to where he had or was to secure his arms and ammunition, but he said that the ammunition which had been [111—69] recovered had been brought there by himself, but he didn't tell me where he got it. He didn't state where he got it.

I next saw Mr. Gandara the morning after that, at the headquarters of the Border Patrol. We asked him, the evening before, to come there the next day, so he said he would come anyway. We

(Testimony of G. V. Hays.)

told him, if we would not lock him up that night and to come down there the next morning, and that is where we next saw him.

As to who was present at that time, it would be hard to say. Mr. Wren was there and I was there, and Mr. Gray of the Border Patrol was there; there was several of the Border Patrol members there, were in and around the building all the time.

He said very little at that time beyond what he had already told us.

After that I saw him on several occasions. He was over at the Commissioner's Court and also I saw him in the jail after he was bound over by the Commissioner. I did not have any conversation with him at the Commissioner's Court. I talked with him in jail. As close as I can remember that was the 27th—26th or 27th of June. Mr. Wren and I went down there together. At that time we spoke of the arms and the ammunition and Mr. Gandara said that he did not take any guns out there personally, but that it was safe to say that all the guns that were out there had been sent there at his orders and instructions; he also spoke of one Chito Valenzuela as having fled from the officers some time before that, and that he himself had hidden Valenzuela for a day or two, thinking that the officers were still looking for him. I do not know if Valenzuela was ever apprehended.

As to whether I had any further conversations with Mr. Gandara, we talked at length and Mr. Gandara said—this conversation was held in the

(Testimony of G. V. Hays.)

Pima County jail about the 26th or 27th of June. I do not recall exactly. It is the same conversation I have just related. The conversation, what I mean, it went further than what I have stated so far. Everything that he said at that time was that he had been approached by certain parties before this, probably [112 — 70] in April; that these other parties wanted to join in with him and assist him and he first started to deal with them and then found out later that they were trying to double-cross him and after that he would not take them into his confidence any further on what he was doing. He said those parties were Gabriel Rendon and a Yaqui named Juan Frias. After that I had no further conversations at length with Mr. Gandara. I have seen him and spoke with him on numerous times since, but not to any great extent. During his conversations with me at that time he mentioned Mr. de la Huerta. He said that de la Huerta had attended this meeting I spoke of a moment ago, at which Gandara was hidden, and that de la Huerta at that time told the Yaquis assembled there that Gandara wasn't the man for them at all—that he, de la Huerta, was the man that they should fall in with and he tried to convey the impression that Gandara was the wrong man for them to deal with.

Cross-examination.

At the first conversation, in El Paso, that I stated we had, Mr. Wren was in the office at the time. As

(Testimony of G. V. Hays.)

to whether he was present at all the conversation, I wouldn't say that he was. There was several rooms in the office and I would not say Wren was in the same room all the time. I was there practically all the time; I may have left the room before the rest of them. That interview did not last two or three hours. It didn't last, I don't suppose, an hour, as I recall it now. As I remember, I would say less than an hour. Mr. Wren was present at all the conversation on the train. Mr. Gandara invited us to eat there with him on the train. We went into the dining-car and had a discussion during the meal—over the table, and before and afterwards. And during that conversation, or these conversations, the Mexican question was discussed. Mr. Gandara, as I remember it, said he was in sympathy with any movement that was opposed to the Mexican government. As to whether he said he was in sympathy with the Yaqui movement, I would not say that he called it the Yaqui movement, or not. He said he was in sympathy with the Yaqui cause, he was for them. [113—71]

As to whether Mr. Gandara said what cause, in connection with the Yaquis, he explained to us that the Yaquis had been mistreated by the present Mexican government, had had their lands taken away from them and this, that and the other. He spoke of messengers having been passed back and forth between here and Mexico. He did not say in what numbers. I don't think he said where they were. He said there had been some of these mes-

(Testimony of G. V. Hays.)

sengers or Yaquis in Tucson; that he was in touch with the situation through them—the Mexican situation, and the Yaqui situation. The Yaqui situation is what I took it to mean. As to whether he said the Yaquis were in uprisings in Mexico, well, they were in one sense of the word, I suppose. I knew that, myself. He practically said that bodies of messengers were coming to the United States and going back to the Yaquis and coming to the United States and going back continually. At that time he did not say that he hoped to join them at this time. As to whether he said that any time, he said that if conditions reached such a point that he would be permitted to go down there, that is the impression I got from his conversation, but he never intimated at that time that he was going to lead any of them down there, or anything of the sort. As to whether he said to me and Mr. Wrenn that if he were permitted to go he was going, I say, that is the impression I got from his general conversation, but I would not say that he said so in those words. It seemed that with Mr. Gandara, the idea that I got, was any way to get there, that is all he wanted, was to get down there and get busy. He did not say that he was going to take any Yaquis that had lived in Tucson or the surrounding country for some time. He didn't say that he was going to take anybody at that time. He didn't say he was going to lead anybody then. Afterwards, he said that. He used the term "expedition." I think he used that term. As to

(Testimony of G. V. Hays.)

whether he said he was going to lead an armed expedition against a friendly power, he did not say that—he said he was organizing the Yaquis into an expedition, or words to that effect, of which he was to be the leader, or the head. That conversation was after we found him at the Yaqui village. He said he was organizing all the Yaquis he [114—72] could get hold of. He said that those enemies of his, whatever you might term them, they run off with some of his Yaquis. In other words, he told me that there were apparently two factions endeavoring to get in with the Yaquis, the de la Huerta faction and himself, but he felt that he had the edge on the de la Huertas and stood in with the Yaquis very much better. But there were two factions who were trying to sway the Yaquis to their side—all of the Yaquis, as I understood it. As to whether I understood that the Yaquis who had lived for years in Arizona, that they were endeavoring to organize them, as I told you, at the time he talked to us on the train, I did not get that impression, but afterwards it occurred to me that it was planned to get all of them that they could and get down there. The thing he said that led me to believe this—he would say “These Yaquis,” “these people” and that sort of thing. I did not think from what he said that when he said “these Yaquis” it included all of the tribes, no matter where located, but I had to assume it, because he was so positive about it. He did not say these Yaquis, these people were in Phoenix. He said

(Testimony of G. V. Hays.)

they were in the village down here. I have been to that village. There are a half a dozen or more houses there—about six houses. That is what I understood he was talking about, then, that village. As to how many Indians live there besides Indians from Mexico, I wouldn't say exactly, but I know in one small house there was twelve or fifteen of these Yaquis who claimed the same house as their residence. I didn't see how it could hold them, but they all said that was their place there. That was while we were down there. I mean in June, in the latter part of June, along about the 24th or 25th. As to how many, in all, were in the Indian village at the time I speak of, well, at the time I was down there, I saw possibly forty or something like that. I know some that were recently from Mexico there. I don't know how many of them were not recently from Mexico, there were probably twenty-one Yaquis had been brought in to Tucson who were from old Mexico, Old Mexico Yaquis, had been released and had gone back down at the time we went down there they weren't all there. As to whether some of them had gone back, they were supposedly gone [115—73] to work on positions that had been gotten for them.

In the conversation that we had in jail, when Mr. Wrenn was present, I don't think Mr. Wrenn mentioned anything about endeavoring to get rifles back for Gandara. I don't remember whether Mr. Wrenn said that "If you bought these and they are yours, we could give or get them back for you,"

(Testimony of G. V. Hays.)

but that would be if it was later proven they were his. Without stating any conclusion, that may have been said by Mr. Wrenn in my presence to Mr. Gandara, but I don't remember that it was. I would not say that it was not said to him. I do not recall that in answer to such a statement, Mr. Gandara said, "Well, they were not mine and I had nothing to do with them and I could not get them back." I am fairly sure that such a thing as that was not said.

Mr. Gandara, on the train, went into the Yaqui situation pretty thoroughly with me; the whole situation. He seemed to show a familiarity with it. I don't know as he mentioned any family connections. I don't recall that. This de la Huerta's first name was mentioned by Mr. Gandara—Alfonso de la Huerta. I do not know what became of him—only such hearsay remarks. In discussing de la Huerta, he said that he had been at a meeting where de la Huerta had advised the Indians to have nothing to do with him, Gandara. I don't think he said that de la Huerta at that meeting had mentioned any arms or ammunition. I am clear as to what Gandara said out at the Indian village, on the date that I met him there, when Mr. Wrenn and the Border Patrol Inspector were there. My statement is that he had said that he had gotten the ammunition. The way he put it was, "I brought ammunition out here." As to whether, "I brought ammunition out here" is the extent of his statement on that occasion with reference to ammunition,

(Testimony of G. V. Hays.)

well, we talked of it so much. I don't imagine that it was, but he spoke of the ammunition and then he spoke of the provisions and then he spoke of what each man was to carry when he started out. As to whether he mentioned rifles on that occasion, well, he said that each man that he was to take was to carry a rifle when he left. He did not tell [116—74] me that each one of these men had come from Mexico armed. He did not mention that. I do not know that of my own knowledge. As to whether there were no rifles mentioned on that occasion, as I remember, the question of the rifles was spoken of later. As to whether I am able to clearly distinguish and definitely say that on that occasion Gandara did not say, "I bought ammunition for some new rifles and I bought ammunition for some old rifles," I don't think he said that. I was not right there with him all the time. As I told you, Mr. Wren spoke to Mr. Gandara off to one side first, before I entered into the conversation. As to whether I was there all the time the Border patrolmen were there, he sat in the car with me when Mr. Wren spoke to one side with Gandara, so that for a few moments he could not hear Mr. Wren talking to Gandara. I would say it was five or ten minutes; it was not long. Practically all the time outside of this five or ten minutes conversation which Mr. Wren had with the defendant, the Border patrolman and I were there where we could hear. The conversation was mostly with Mr. Wren, but I asked a few questions. As to whether Mr.

(Testimony of G. V. Hays.)

Gandara was then requested to report the next day at the Border Patrol, well, he told us that he would meet us any place we designated, and I don't think we told him to come there, but he did; he was there the next morning when we returned from breakfast. To the Border Patrol. He was not taken into custody right then.

At that time I had been with the Department of Justice a little less than three years. My profession is attorney at law. As to whether I said that this man admitted in my presence that he, according to my understanding of the law, had violated the law, yes, he realized, from what he said, that he had erred. I understood that he had. I knew the law and Mr. Wren and I didn't arrest this man; we don't make arrests. As to whether a Department of Justice man never detains a man, we can ask them to come back—or something like that—but we don't serve warrants or officially serve warrants or make a return on it or anything like that. That was partially the reason we did not arrest him that day, because we are not arresting officers. [117—75] I believed that he had admitted to me that he had committed a felony. I did not make any efforts to detain him right away, because he said, "I will give you my word that I will be anywhere you want me to be," and Mr. Wren and I both said to him that we felt he was a man we could trust and we would let him go on his own recognizance if he would see us the next morning, which he promised to do. We re-

(Testimony of G. V. Hays.)

leased him on his own recognizance, and that is a courtesy which is not always accorded. I felt Mr. Gandara was such a man that I could so trust. I felt his word was good, and it was seemingly so. He reported in the next morning, himself. I don't think Farrar was there during any of these conversations. As I recall it, Farrar was never present at a conversation. Mr. Farrell, I think, was the boy that was with us.

Redirect Examination.

As to whether those Yaquis who came up from Mexico last spring were disarmed after they reached the United States, I never saw them with any arms at all.

Recross-examination.

I do not know that they were disarmed. [118—76]

TESTIMONY OF JOHN K. WREN, FOR THE GOVERNMENT (RECALLED).

JOHN K. WREN, being recalled as a witness for the Government, having been previously sworn, testified as follows:

Direct Examination.

I held a conversation with Mr. Borgaro at his place of business prior to the time I went out to the arroyo. As nearly as I can remember it was on or about, I think, the 9th of June. Mr. Caldwell and I believe Mr. Farrell, the two Border Patrol

(Testimony of John K. Wren.)

Inspectors were present. Borgaro said all the guns were in the store, in the back of it. As to whether I examined the cases or counted them to see how many of them there were—and, it appeared to me that there was three cases gone, that is, there was only five boxes left, or five cases, whatever you call it and three gone. What he said in reference to those five that were there—I walked into the store and when Mr. Borgaro came there about the time—I know it was in the evening I told him my business. I told Mr. Borgaro who I was, showed him my credentials and told him that some guns had been taken away from his store, and what had become of them. He said, “They are all in the store here; they are all in there; they are all there.” “Well,” I says, “well, now, you have been seen to go away from here with some guns, and here is the man who saw you,” and I think I pointed to Mr. Farrell. He says then, “Well, I sold some of them,”—he finally admitted that there were some guns gone. I said, “Well, will you show me where you delivered them?” He said, “Yes, he would go with us,” and I don’t remember—we got in a car with Mr. Caldwell and Mr. Farrell and we drove south from Mr. Borgaro’s store, or probably southwest and turned and went out several blocks southeast, and Mr. Borgaro, in the car, on the road, said that he did not deliver them to the house, but delivered them out to an arroyo, near some place called Millville, and then I said, “Well, you will take us to that place?” and we drove on out and across the

(Testimony of John K. Wren.)

railroad tracks, I think, and then he turned kind of north, and then showed us a hollow or an arroyo, and said, "At this point is where I delivered some guns to some men in a truck." I don't remember whether he said eight or ten or twelve men. I asked him, "Well, who was the man who was with you, delivering?" "I don't know his name." Then I asked him, "What became of this party?" and he said that he went away with—that he left him there with the men in the truck after [119—77] the guns had been taken out of his, Borgaro's car and put into the truck of the men who had received the guns, and then we drove on out kind of north and came back to town. That was in the evening. I could not say the exact hour, but it was sometime, probably between two and four o'clock. Well, we made an examination there of the ground, and I asked him where the truck was standing, or words to that effect, and he said, "There," and we looked around and could not see any tracks of a truck or car or of any men, and he said, further said that a man had been into his store, a man or two men, he said, or some men, and told him that they wanted somewhere around seventy-five or a hundred rifles and they would take, with the rifles somewhere around twenty thousand rounds of ammunition; that the man whom he was with when the guns were delivered was there at the time, and the purchaser of the rifles, or the man desiring the rifles, designated this particular man who was with him in the car at the time that he delivered to the ten or twelve men in

(Testimony of John K. Wren.)

the truck the twenty-five of the rifles, and that he was to get for the rifles around twenty-nine dollars and a half; they were carbines, they were thirty-thirty rifles; that before the guns—he had ordered the guns on that date, and a short time or about the time that these parties were in the store, which was several days previous to the time that the guns came by express, and part of them were delivered by him, and that the gentleman or the party so designated by the purchaser as to show where the guns were to be delivered, or to receive and pay for the guns, came back on several occasions, urging the delivery, or wanting the guns to be delivered, and that he had come back two or three times on the date the twenty-five—on the date that the twenty-five were delivered out at the arroyo, and when the guns came the party paid him, this agent of the purchaser paid him for twenty-five, or the amount of the number, and urged him to deliver to a place the guns. That he delivered out at this arroyo the guns, and the party was insisting all the time that he was to deliver, and he did not care much about delivering, but he had his money into the guns,—that is, his money was invested in them, that he had ordered the guns from Dunham, Carrigan, Hayden & Company, I believe, from San Francisco, and had made arrangements at the Southern Arizona Bank & Trust Company for the payment of the guns to the firm they [120—78] had been purchased from. That at the time this party came in, that is, the agent of the man who wanted the guns, and the

(Testimony of John K. Wren.)

one who went with him out there, and urged him to deliver, he thought there was something wrong about it and figured they might be for fighting purposes, and at the time of delivery, out at the arroyo, he realized that they were for revolutionary purposes.

When he made the statement that he realized the guns were to be used for fighting purposes, as I got it, as I understood it, that when he delivered them out there to the place, he realized that it was for revolutionary purposes, but yet, when this man came into the store, insisting that he deliver them, he knew or believed that there was something wrong, and that they were for fighting purposes. That is his words, as I remember, or about his words, I couldn't relate positively the exact words. He stated further that they were to take some ammunition, that he had bought or ordered a quantity but did not state the exact number of cartridges, or rifle cartridges that would probably go with the guns, or words to that effect. As to whether he stated the parties to whom the cartridges were to be furnished—well, to the same parties who—he indicated it was the same parties who had bought the guns or who had ordered the guns or who had him to order the guns. While we were out there, why, of course, we made efforts to have Mr. Borgaro to tell us who the people were but he could not, did not know the names, and I believe he said that they were Mexicans; he could not say where they lived, which way they went, or anything to that

(Testimony of John K. Wren.)

effect. He said that he left them there, that he went on with his car and left all parties there with the guns. He said when he stopped there that they came over to his car and the man that was with him got out of his car and helped this man transfer the rifles over to the truck. Several of us got out there, —I don't remember just who, Mr. Caldwell, Mr. Farrell and myself.

The first time I had any conversation with Mr. Gandara was at the Bureau office at El Paso, Texas. It was probably in the early part of the month of June, or about that, right at that time. As I recall the time and place Mr. Arthur Colvin, Agent in Charge, and Mr. Hays and myself were present. As to what the defendant Gandara said at that time —well, I would have to state as to what we first said to Mr. Gandara. I called him [121—79] up by telephone and had him come to the office, requested him to come to the office, and when he came to the office—he came some time, I believe, in the evening, —and Mr. Colvin told him that he had information that he had—was mixed up or kind of connected in a shipment of arms or ammunition at Nogales, and Mr. Colvin further advised him that he wanted to warn him that he had better watch his step, or words to that effect, that if he did not he might get into trouble over it.

I did not see him any more. Mr. Gandara lived in El Paso and I may have met him several times—I don't remember exactly; both lived in the same place. But the last time, that is, after that, Mr.

(Testimony of John K. Wren.)

Hays and myself were coming to Tucson and we met Mr. Gandara at the Union Depot at El Paso, Texas. Something was said about, "Where are you going, boys?" or words to that effect, and I believe Mr. Gandara said, "Well, I intend to go to Phoenix," or "I intended going to Phoenix, but I might stop off at Tucson," or "I will stop off at Tucson," and we both bought tickets about the same time, along that time, and we boarded the train, and later we were in the smoking-car, or the part belonging to—it wasn't in a smoker but it was some part of a passenger-car where you could smoke and read, and we had several conversations during the trip or during the time that we were en route from El Paso to Tucson. Mr. Hays, Mr. Gandara and myself were present during those conversations, part of the time, and probably someone might get up, but off and on, we were together. I don't know just how the conversation came up, but there was something said about conditions in Mexico and the Yaquis, or something to that effect. He said that the Yaquis were having a pretty hard time and that he was in sympathy with them, or any movement against the present government of Mexico. That the government was not what it should be, and then he said that his grandfather—he told me his name, but I don't remember, but he was a man who had lived in Sonora for many years—and he had been a friend of the Yaquis or had helped the Yaquis out and as I understood it, that he had been killed years ago for that cause, or some words to that

(Testimony of John K. Wren.)

effect, for helping the Yaquis. Of course, I cannot remember in detail just all the conversation about the entire matter, but it was conversation to that effect. I just stated that he said the Mexican government was no good, that it was not a good government. [122—80]

As to the next time that I talked to Mr. Gandara, well, we went to bed and it was the next day, I believe, or in the evening—I couldn't say exactly what hour, but it was some time after dinner—Mr. Hays and Mr. Farrell and myself went out to the Yaqui Village, known as Mesquital, which is located, as I remember seeing it, on the river bank out here, the Santa Cruz River. We drove up in our car and when I was about to get out, why, I saw Mr. Gandara coming from one of the houses or from that direction, and I spoke to him, and I don't know exactly—I don't remember just who spoke first, but something was said about, "Well, what has happened?" or "Joe, it looks like we have caught you," and Joe said, "Yes," and then I spoke up and said I was surprised at it, I did not think that, I believe I said, I believe, "I thought you had more sense than to mix up with those Indians." And we talked for a little while about the matter and he said, "Well, I have tried to help these people, and I intended to go with them and we would have left sooner" or "would have left a day earlier," some time a week or so before that, but something came up with reference to the Yaquis, they wasn't all ready and there was some decision made about going

(Testimony of John K. Wren.)

after San Juan's Day, or about that time. As I recall the date that Mr. Hays, Mr. Farrell and myself went to Mesquital, it might have been on San Juan's Day on the 24th of June; it was about that time.

The next time I talked with Mr. Gandara was the next day. That is, Gandara said, asked what was going to be done with him, and I remarked that the matter would have to be taken up with the United States District Attorney, that he was not under arrest, that we had no powers of arrest, and he said, "Well, I will be any place you tell me to be; I will meet you any place," and it was agreed upon, some way or another, that we would see him later, and I believe we went into the house. And with reference to the provisions, there was some provisions out there in the house of the old Indians named Molino, and we decided that that would not be seen; in other words, that what we left there these Indians could have it to live on, could keep it. We left, and the next day I met Mr. Gandara, and I believe at the Border Patrol. Mr. Hays and myself were together, and we had been down, as I said to Mr. Gandara, that we had been practically, [123—81] well, from early in the morning for a considerable time, questioning some of the Indians, a number of them who had been brought in by the Border Patrol with the arms and ammunition which had been found out there near the house of Antonio Molino, Francisco Feliz and another Indian, which I think his name was Juan Alvarez, and I told Mr.

(Testimony of John K. Wren.)

Gandara that we had released the Indians, that they would report back probably the next day or at the time they were needed, and we talked further about the time when he was to go and where he intended to go, and he said that he had been preparing to go for some time by exercising in the hills and walking, and said he intended, when he did go with them, that he was going to walk, that they had no horses. Each man was to have a gun and so many rounds of ammunition and his provisions and they would start out, if the Indians knew the route and knew the country, and would have left at night, and he spoke of the jealousy existing, in other words, of two men interfering, in other words, trying to win the Yaquis over, and he said one of them in particular was named Juan Frias and the other one was named Alfonso de la Huerta, and that Juan Frias,—no, that one of them was named Juan Frias and the other one was named Rendon, Gabe Rendon, and when he found out that they were working against him and probably would have double-crossed him, he would not have anything further to do with them. We further talked about the guns. He said the old guns were guns they had brought in, had been brought in by the Yaquis, and that the new guns were guns that really he was responsible for, but, however, he had furnished ammunition and carried it there, a good part of it himself, for all the guns that were found there and that we had not—did not find all the guns and ammunition that was there; we only found a part, that only a part

(Testimony of John K. Wren.)

had been found, that the boys only found a part at the Mesquital village.

He didn't state at that time where he secured the new guns, he did later. Well, there was a conversation—Mr. Gandara talked about some people coming down to the Yaqui village, but I believe that was on the train. I was trying to think just where that occurred, or where he said it occurred. It was on the train, I think, he said, when he told us about this affair, and then several times later it was mentioned, in the conversation the next day. It was with reference to Alfonso de la [124—82] Huerta, and the man named Rendon, coming to the Yaqui village and he, Gandara, was there, and when he recognized them and saw them, why, he kind of got with the Indians, that is, he got among the Indians—there was a number of them standing there in this particular meeting, and Alfonso de la Huerta addressed the assembly and asked if there was any Yoris there, and I have since found out that "Yoris" is the Yaqui word for Mexicans, and the Indians—I couldn't say just who Mr. Gandara said it was replied to that, but they told Alfonso de la Huerta that there was no Mexicans there, and then Alfonso de la Huerta, in his talk to the Indians, went on to say that Gandara was not the man to go with them, and that he was nothing but a boy and had—he had very little money, that he had some, but not as much as he, Alfonso de la Huerta, had or could get, and that they could go on down into Mexico with him and probably do more—that is, with him

(Testimony of John K. Wren.)

being a leader—than Gandara could do. In other words, Gandara could not help them like he could after they had reached Mexico. The party left, this party left and Mr. Gandara said he talked some to the Yaquis at that particular time.

This conversation took place on the 25th or 26th of June. It was after we—after we met out at Antonio Molino's place at Mesquital and this particular conversation that he was referring to was one that took place after we visited there, after we met at the Border Patrol Office. There was no one present except Mr. Gandara and myself; we were on our way from the Commissioner's Office to the Western Union office. He has been arrested at that time. As to what Mr. Gandara said—well, at the Commissioner's office Mr. Gandara said that he would like to send a telegram and get his clothing; or something to that effect; I know it was with reference to the telegram and Mr. Mills, the deputy marshal, said that I could go with him to the telegraph office, and I am sure it was the Western Union. Anyhow we went up there and going up there we talked about the guns, the rifles, and we brought up about who he had gotten the guns from. He told me that he got them from, he bought them from or he ordered—who he ordered them from, and he said that he had designated a man by the name of Chito Valenzuela a Yaqui Indian, to pay for and receive the guns and deliver them and take them, as he was not here in Tucson or near Tucson, at the time of the [125—83] delivery or the de-

(Testimony of John K. Wren.)

livery of part of them; that the party that he bought them from first made efforts in Tucson to get rifles here, but he failed to do it and so ordered them—he didn't tell me from where, but said they were the same rifles, part of which had been seized out at Mesquital, and that he thinks really were rifles—his, Gandara's, rifles, the new rifles. At this time I don't recall any further conversation. We went on back to the marshal's office. At that particular time he did not say so much about the ammunition. We had talked about ammunition before. That was on the same day that we saw Mr. Gandara at Molino's place and down at the Border Patrol which was on or about the 24th; I couldn't say exactly, just exactly whether it was the 24th, but it was about the 24th; it was the day we were out there in the evening.

As to what he said about the ammunition, well, out at Molino's house, Molino's place at Mesquital, and it was discussed, with reference to the ammunition, was discussed at the Border Patrol office, headquarters office. Mr. Gandara stated at that time while Mr. Hays and Mr. Farrell and myself was out there, that he had delivered the ammunition for the rifles. He did not state where he had secured that ammunition, he had—he did state that he had secured it here in Tucson, but he didn't say whose store or what place. He stated he had secured several thousand rounds, and that it had not all been found out there, that the searching parties or officers did not find all, and he said they did not

(Testimony of John K. Wren.)

find all of the guns at that time. I understood him to say there would be some ammunition with the guns, for the guns. On the 25th day of June, 1927, at the Border Patrol Mr. Gandara stated that at that time all the ammunition or guns had not been found, that they did not find all of them, or words to that effect. Mr. Hays, I think probably Mr. Caldwell was present at that time at the Border Patrol. Gandara said at that time that Chito Valenzuela had gotten away, at the time of the delivery of the guns, and that he had kind of kept—had advised him or would advise him or someone advising him—he could not say—to keep out of the way and in hiding. Chito Valenzuela has not been apprehended. At the time I talked to Jose Gandara at Mesquital on or about the 24th in the presence of Mr. Hays and Mr. Farrell he did not make any statement about the rifles that had been delivered to the house of Antonio Molino or near the house of Antonio Molino. [126—84]

TESTIMONY OF JOHN K. WRENN, FOR THE GOVERNMENT (RECALLED).

JOHN K. WRENN, a witness for the Government, being recalled by the Government for further examination, testified as follows:

Direct Examination.

I was asked on direct examination last Friday, just before leaving the stand, if Mr. Gandara had made any statement at Mesquital in reference to

(Testimony of John K. Wren.)

the rifles that had been delivered to the house of Antonio Molino, and I stated at that time that there had been no statement. That is not correct. At that time, Mr. Gandara was not under arrest. Mr. Hays and Mr. Farrell and myself went out there to see the country, as well as to visit the house of Molino and see him. We had been there and told him we would be back to his house, and when we reached the place, Mr. Gandara was there. The new rifles had been seized at that time. At that time we met Mr. Gandara there, the question came up about ammunition, provisions and guns and supplies, and he said that he was responsible for the new guns that we found there, but that he didn't handle those old guns that were found there, but he did deliver the ammunition there for both old and new. [127—85]

JOHN K. WREN, being recalled for cross-examination as follows:

I am not a member of the Secret Service of the United States. My official position is Agent of the Department of Justice and the Bureau of Investigation of the Department of Justice. It is not the Secret Service of the United States as we term the Secret Service. We generally investigate these various activities that we feel that may be tending towards violations of the United States Statutes—those violations that come under our Department. Those that come under our Department. It is pretty hard to say how long I have been engaged

(Testimony of John K. Wren.)

as such, just how long, exactly the number of years, because I can safely say that I have been with the Department since about 1912, not all the time, but most of the time. About fifteen years. Previous to that time I was a cowboy. As to whether I had had any official experience before becoming attached to this Department, my father was the sheriff of a Texas County for about twenty years or twenty-two years. I served under him a great many times and the man who succeeded him, I was his deputy for a few years. I had been a Deputy Sheriff as well as a cowboy but not for many years before I entered the Department. I could not tell you how many. I couldn't say exactly; I'd say probably from the time I was twenty, eighteen or twenty, for various times before I came to El Paso, maybe four or five years. I am fifty-one years old now. I couldn't say that I had charge of this case from its inception. Mr. Hays and myself were together practically all the time during the investigation. We have an agent in charge in our El Paso office. I worked on it. I couldn't say that I have been the one man in charge of the investigation here in Tucson and at Mesquital, because there have been several agents work on it at different times. While I was here I have been directly in connection with it at all times, myself—at times. And I went and interviewed quite a few of the various witnesses and with reference to the arms shipments, I made the investigation with Mr. Hays, and sometimes by myself. I did [128—

(Testimony of John K. Wren.)

86] not swear out search-warrants myself; not all of them, I don't think so. As to which ones I didn't swear out, I didn't swear to the search-warrants where the seizures were made out in Mesquital or that vicinity. I believe that I did sign the search-warrants before the Commissioner with reference to the seizures made at Mr. Borgaro's store. I think, the rifles and ammunition there at Mr. Borgaro's store. I did not swear out all of the warrants arresting Borgaro and those others before the United States Commissioner. I couldn't say positively that I did. As to which ones I did make the affidavit and swear to myself, I don't think that I signed the complaint of Mr. Gandara; I may have signed that complaint of Mr. Borgaro. As to Mr. Valenzuela I am not sure. There is quite a few of them. There was John Doe and Richard Roe and some others included in that complaint against Mr. Borgara. As to whether under that complaint that I swore to there, the warrants were issued under which Borgaro was arrested and Valenzuela was arrested, I don't know which Valenzuela you mean. As to the Valenzuela that had been arrested and was tried down before the United States Commissioner the man who was turned loose up here the other day and the indictment dismissed as against him and that was the man that was arrested under this complaint that I swore to up there if I could have or see the complaint I could tell you whether I signed it or not. As to my recollection of it I am not sure about Valenzuela, whether

(Testimony of John K. Wren.)

he was arrested on a complaint or not, or whether he was arrested from a *capias* from—or from a complaint, I would not say. I remember the arrest, but I am not sure whether it was from a complaint that I signed or it was taken from a *capias* on another date. As to whether, as a matter of fact, Mr. Valenzuela that was down there wasn't arrested on that complaint that was sworn out against Borgaro and the others, brought into court and tried there at the same time, on the preliminary examination, as Mr. Borgaro—he was before the Commissioner and had the preliminary trial, I think, at the same time Mr. Borgaro had. And I was present there and the United States Attorney was there, and I testified at that preliminary examination and Mr. Spence, Border Patrolman, testified on that hearing and Mr. Williams, a member of the [129—87] Border Patrol, testified at that hearing, and Mr. Valenzuela and Mr. Borgaro were bound over to the United States District Court at that hearing. So I have been interested in this transaction right from the first from the Government standpoint. I could not say I had a personal interest in seeing that these defendants are convicted. As to my official interest and the pride of my personal actions and official actions giving me an interest in the prosecution of this case and the conviction of these defendants, I cannot say that I feel any bitterness or anything like that—I don't know exactly what you mean. I talked with most of the witnesses, I think, before the

(Testimony of John K. Wren.)

matter came up; I took statements and notes and things like that. I made notes on what they said—as to what they said. I talked to Mr. Conger. I talked to Mr. Holliday after coming here, with Mr.—in the presence of Mr. Perrin, but I hadn't—I have never seen the man or heard of him before, only by his name. I talked with Mr. C. M. Orosco and talked with Mr. W. E. Jones and took his statement. As to Mr. Lee Caldwell, I talked to him but I didn't take his statement, but he didn't sign any statement or anything like that; he was present at some of the interviews. I believe Mr. Caldwell was one of the witnesses that were called and sworn here at the opening of this trial. I talked with J. J. Farrell; I didn't take any statement, only just made notes of what he said. As to whether I talked with Mr. A. G. Spence and took his statement, I don't think Spence had anything much to do with this case. (The Court here stated to the witness, "The question is, whether you talked to and took his statement," and the witness replied:) I talked to him, yes, sir. I did not take his statement. No statement was taken. I talked to him and made notes of what he said. He was one of the witnesses who was called and sworn at the opening of this trial. I did not talk with Dallas Ford and take his statement. I think he was one of the witnesses that was called and sworn at the beginning of this trial. I didn't take any statement from Fred Ryan; I talked to him. And C. S. Farrar the same; he was one of the first men I talked to. I talked to

(Testimony of John K. Wren.)

P. G. Raymond; I didn't take any statement. He was one of the witnesses who was called and sworn at the opening of the case. [130—88] I talked very little with A. R. Murchison; I don't think I talked to him but very little. I believe he was one of the witnesses who was called and sworn at the beginning of this trial. Some I did and some I didn't. I did not of Mr. Thornton. As to whether I made any written notations of the statements of these various witnesses, some I did and some I did not. Mr. Thornton was one of the witnesses who was called and sworn at the opening of this case. And I talked to Mr. Gabriel Miranda, and he was one of the witnesses who was called and was sworn at the opening of this case. I also talked with Mr. C. Woods, and he was one of the witnesses who was called and sworn at the opening of this case. I talked to Mr. Brown, I am pretty sure, but I did not take any written statement, and I believe he was one of the witness who was named and sworn here in the beginning, at the start of this case. As to whether I talked with Juan Navarez also, now, I cannot say that I did with Juan Navarez, but I did talk with Juan Alvarez. I did talk to Juan Alvarez, I believe he was one of the witnesses who were sworn at the beginning of this case. I talked with Antonio Kupas. I believe he was one of the witnesses who was sworn at the beginning of this case. I am pretty sure that he was. As to whether I talked with "Barceban," one of the witnesses in this case, I cannot recall Barceban. I don't know who that

(Testimony of John K. Wren.)

is. I don't recall a witness going by the name of Barbesson. As to whether I talked with a witness named Baltazar — Baltazar who? I talked to Maltide Baltazar. She was one of the witnesses that was sworn at the opening of this case. I believe I talked with Cresencio Armenta. I talked with Cresencio Armenta. I talked to Juana Mendoza. She was one of the witnesses who was sworn at the beginning of this case.

I say that Chito Valenzuela has not been apprehended. As to when was the last time I saw him, I cannot say that I ever saw him. As to whether I don't know that I ever saw him and all that I am then testifying, that Chico Valenzuela or Chito Valenzuela has not been apprehended is what I have heard from other parties, well, I know that from information that I received through our Bureau, it would show that he has not been apprehended. As to what I say being hearsay with me, and I don't know that Chito Valenzuela has never been arrested, of [131—89] my own knowledge, I do know of my own mind that he has not. I know that he has not been apprehended. I believe I would know him if I would see him. I have not been personally acquainted with him. I have never seen him. I would know if he was apprehended, if he had been apprehended. As to whether I know of my own knowledge, I know that he has not been apprehended. I know it from the records and from the agents who have looked for him, and know it from the people that know him. From hearsay

(Testimony of John K. Wren.)

I know that. As to whether I know that of my own knowledge, I haven't seen him—I do know, of my own knowledge that the Valenzuela that was tried down before the Commissioner Jones and bound over to this Court there in my presence was not the Chito Valenzuela that I am looking for—There is many different ways of knowing it. Just of my own knowledge, I know that he is not Chito Valenzuela—I know that Martin Valenzuela is not Chito Valenzuela. As to whether I know for instance, that John Doe is not Richard Roe, I was not talking about John Doe and Richard Roe—I was speaking of Martin Valenzuela and Chito Valenzuela. I am not acquainted with Chito Valenzuela. Of my own knowledge I know that this Martin Valenzuela is not Chito Valenzuela. I know that several ways he said he wasn't Chito Valenzuela. That is one of the ways I know, that Martin Valenzuela said he was not Chito Valenzuela. I heard him say it in Commissioner's Court. I did. I did not hear him testify here. I didn't have the power to turn him loose.

TESTIMONY OF JOHN J. FARRELL, FOR
THE GOVERNMENT (RECALLED).

JOHN J. FARRELL, a witness for the Government, was recalled and testified further as follows:

Direct Examination.

I stated that I went down to the arroyo where Mr. Borgaro had said that the rifles were delivered.

(Testimony of John J. Farrell.)

The ground out there was very soft; it was soft enough to show any kind of a track—that is, in regards to footprints or a car print. [132—90]

(The Government here rested.)

TESTIMONY OF JOSE GANDARA, IN HIS OWN BEHALF.

JOSE GANDARA, one of the defendants, being duly sworn, testified in his own behalf as follows:

Direct Examination.

My name is Jose Gandara. I am thirty years old. I was born in Chihuahua, Mexico. I have lived in the United States about thirteen years. For the past eight or ten years my business has been—I have been a merchant in El Paso. I have dealt in photographic supplies and pictures and frames—art goods. I live in El Paso, with my wife and children. I have lived in El Paso about thirteen years. I had been in Tucson a number of times during April, May and June 1927. As to whether I came here to see any particular parties—none that I knew in particular. I came here to see some of the Yaquis that I knew resided here. The Yaquis that I came to see were all from Mexico, but I didn't want to talk—that is, I wanted to get in touch with the Yaquis from Mexico, and I came here for the purpose of finding from the Yaquis here how I could get in touch with the Yaquis in Mexico. When I came here there were about twelve Yaquis that had

(Testimony of Jose Gandara.)

come in from Mexico. They had come from the State of Sonora. As to whether at that time I knew the conditions in the State of Sonora with reference to whether there was peace or a rebellion or uprising there, the Yaqui rebellion has been on for years and it was particularly hot at that time. There had been a battle down there—I don't recall exactly the place, but it was somewhere south of Magdalena, in which General Armenta, and several officers and soldiers, had been killed. That was the condition at the time I came to Tucson, Arizona. I did not meet or see any of the Mexico Yaquis when I got here. I did slightly after. I came here before these Yaquis arrived. I came back on another occasion and saw these Yaquis from Mexico. From what these said, or from [133—91] what I learned, these Yaquis had been fighting and they had considerable difficulty in obtaining ammunition. They came here to Tucson to get all the supplies they could and to go back. I came here first and did not meet them, and then, the next occasion I came here, I did meet some of these Yaqui Indians. I don't recall the exact date of my second visit here, when I saw some of these Mexico Yaquis. Approximately, it was sometime during either the latter part of April or the first part of May. As to how many I saw at that time I saw various groups that were in different parts around here; altogether there must have been about a hundred and forty or fifty of them. They came from the Yaqui River. They

(Testimony of Jose Gandara.)

were armed; they were part of the band that fought General Armenta. Their object in coming out of Mexico from that battle to Tucson was to get arms and munitions, mostly ammunition. As to arms, they had them, for there had been possibly forty or fifty million rifles imported into Mexico since 1910, according to general information. I saw these Mexico Yaquis at different places; most of them at Mesquital. Mesquital is about six miles from Tucson. As to whether it is a small Indian village, I wouldn't call it a village. I think there are only four houses. Four houses on the Santa Cruz River, the edge of the river. There are four families living there, as I recall; one is Antonio Molino and another one is Francisco Feliz and I think there is another one, Juan Alvarez. I don't know if there are four or just three—I don't recall. I would say there are about four houses there, occupied by local Yaqui Indians, who live here.

As to at what other point I saw any of the Mexico Yaquis who had been coming from battle, there were—might I explain something about the way of communication that they have? They have fourteen couriers—I would see these men—I would say it is my own knowledge that I know this. They have fourteen men that they call couriers, or correos, in Spanish, and they come from the Yaqui River on foot, about three hundred and fifty miles to Tucson, where they communicate with the Yaquis who reside here; and the Yaquis who reside here al-

(Testimony of Jose Gandara.)

ways send messages and invariably munitions [134—92] and supplies to the Yaquis down in Mexico. These couriers get whatever ideas these other Yaquis have, and it takes them about six weeks to get back and tell the Yaquis down there what the message is that the Yaquis here sent to those down there; they suppose that the Yaquis down here know more about the general situation than they do down there. As to where else I saw some of the Yaquis other than in the settlement of Mesquital, I saw the couriers in the village that I don't know the name of—it is back of Sixth Avenue, about two miles from here, where I attended to wounds that two of those couriers had received in the battle of Armenta. I mean I attended to them; they were wounded; two of the couriers were wounded badly and three others were wounded, shot in the lung, one of them, and some were wounded in the leg and in the hand. I am not a doctor, but I cleansed the wounds and disinfected them and dressed them, and gave them what medicine I thought or knew would be the best for them. That was when these had arrived after that battle. I don't recall the date; it was either in the latter part of April or early part of May. These men were suffering from gunshot wounds. One of them had been shot in the lung and the canteen—his canteen was shot first, and that stopped the bullet from going through the heart. I don't know the name of that village. As to where else I saw some of these Yaquis from Mexico, there were others, I don't

(Testimony of Jose Gandara.)

recall having seen in any other place except in these two places. As to what was my object in seeing these Yaquis who had come up from the rebellion in Mexico, I wanted to go back to the Yaqui River with them, to talk to the chiefs down there, and my purpose in coming to Tucson was to get the older men of the tribe, which is their authority, to give me some sort of recommendation or document that would introduce me to the chiefs of the Yaquis in Mexico. As you know, the Yaquis do not believe or accept anybody unless they have been OK.'d or accepted by the chiefs in Mexico, by what they call the "Ocho Pueblos"—the eight tribes. The eight tribes of the Yaquis. I expected to go with these Yaquis on foot; that is the only way they travel—the three hundred and fifty miles. As to what period of time I was out [135—93] there interviewing these Yaquis from Mexico, I interviewed them and saw them about two months, something like that. These Yaquis were armed; they must have been. I know that they used Mauser rifles, seven millimeter, the regular Mexican Army arm, and they use thirty-thirties and thirty-forties, though they are very partial to the thirty-thirty. Subsequent to my interviews with these Yaquis, I obtained ammunition. That was approximately about—around the middle of June, or perhaps a little before. I brought ten thousand rounds, or about eight or ten thousand rounds from El Paso of seven millimeter ammunition. As to why I got seven millimeter ammunition—that is the arms the

(Testimony of Jose Gandara.)

Yaquis have; that is the Mexican Army gun and the Yaquis used to be soldiers in the Mexican Army, during the early administration of Calles and Obregon; as a matter of fact, it was the Yaquis who put Calles and Obregon in power. I got some eight or ten thousand rounds of seven millimeter ammunition. I gave it to the Yaquis, also with the understanding that they were to hold that ammunition, bury it and hold it until I told them— Well, I was waiting momentarily for a word from friends that I have in El Paso and in Washington, expecting the arms embargo to be lifted. As to what led me to believe that the embargo on arms, that is, the Presidential proclamation against the shipment of arms to Mexico would be lifted—I was in Mexico City in December, and I saw a telegram that had been taken out of the files of the President's office, in which he ordered a ship to sail from Salina Cruz to Nicaragua, which ship contained arms and ammunition, which was arms and ammunition which the United States Government sent to Calles to fight de la Huerta, the de la Huerta revolution, so that the Nicaraguans would fight the marines down there. That was the first intimation I had that such a thing would happen. I recall the name or mark of those rifles which I say were shipped by permission of the United States to the Calles government—they were Enfield rifles and United States Government ammunition, a large part of it—not all of it, but a large part of that shipment contained it. I saw the original telegram. I communicated this in-

(Testimony of Jose Gandara.)

formation to two officers of the United States [136—94] I communicated it, that is, I asked that this telegram be turned over to the American Embassy in Mexico City, which I afterwards found out had been done, and I afterwards told the Secretary of State about it—Secretary of State Kellogg.

I based my belief that the embargo against the shipment of arms to Mexico would be lifted on something else, with reference to some statements made by United States Government officials; there were two conditions existed there that led me to believe, and as a matter of fact, I wondered why it had not been done—one was the activities of Calles in Nicaragua—and then the enacting of laws which were confiscatory and are retroactive in Mexico, against American owners, especially oil companies, mining and land companies, and I thought that that would undoubtedly bring about either a break of relations or at least a lifting of the arms embargo. A statement was made by officials of the United States which I knew of and which caused me to believe so; President Coolidge, on or about the 10th of January issued a very strong statement to Congress, in his message, accusing and denouncing the acts of Calles in Nicaragua, and another officer, Secretary Kellogg issued very strong statement to the press along those lines. I knew of this and I knew of certain companies, owning property in Mexico, American capital, were trying very hard to get the Government in Washington to bring about a change in these laws, and I knew that it was the

(Testimony of Jose Gandara.)

opinion of even Ambassador Sheffield that there was no other way but to lift the embargo. While in Mexico City, I have heard from people that were very close to Ambassador Sheffield that he was thoroughly dissatisfied with the conditions in Mexico, and that he was not satisfied because he was not backed very strongly by the State Department. I heard expressions to the effect that if he was not properly backed in his stand that he would resign. I knew these things when I purchased this ammunition in El Paso.

I delivered this seven millimeter ammunition at Mesquital, at one of the houses; I don't know what the owner's name is, but it is the one that lies closest to the river, I would say north of the [137—95] other houses. I did not, at the time that I delivered this ammunition at Mesquital, intend to participate in its exportation by anyone before the lifting of the embargo. I held the Yaquis back here, and that is one of the reasons why I had a great deal of trouble, that I did not intend them to send that before then. I did not intend them to leave, that is, with any ammunition that I had furnished, before the embargo was lifted; I asked them specifically to remain here until we were ready. I did not explain to the Indians anything about the embargo or what I had in mind, my reason for delaying them. I just told them they should believe me, and I knew better. Their mind is rather small for that. And because of my request, the Yaquis at this village waited—remained here.

(Testimony of Jose Gandara.)

Some of them were here when I was arrested and some left on the night, on the day in the night the place was raided there. I learned that afterwards, that when the American officers came in and started to dig up the things that they found there, I heard that about twenty-seven or thirty of them, that lived on the house close to the river, had gotten scared and dug up and left. There was other ammunition that I obtained. It was about the middle or below the middle of June, on or about the middle of June, as a matter of fact, I delivered four thousand rounds or more of Mauser ammunition, thirteen thousand rounds of thirty-three ammunition and one thousand rounds of thirty-four ammunition. I delivered it at Mesquital. It was also buried. The Indians gave—they have—I don't understand all I know about their ceremonies and the things of that kind, but they have certain sergeants and corporals and other officers, because these men came from the Yaqui army, and they all have some sort of a position there—I don't understand the details of it. This ammunition was turned over later to these corporations and they were told to bury it and keep it there until they were told what to do. That was in June some time. As to about how long before my arrest, assuming that my arrest was along about the 25th—I imagine it would have been about, possibly, ten days or about something like that.

I did not, at any time, begin or set on foot, or provide [138—96] the means for a military ex-

(Testimony of Jose Gandara.)

pedition in the United States against Mexico. I did not at any time conspire with Borgaro or any other persons to here, in the United States, begin or set on foot or provide the means for a military expedition to go from the United States to Mexico. As to what these Indians from Mexico comprised, with relation to the military affair, from my understanding, well, they have about two thousand or three thousand fighting men. The tribe, I think, consists of about eight or ten thousand Indians, but I think about three thousand of those are fighting men, who are more or less—I don't know whether organized or not. I don't think they are organized in military form, but they have officers and they are soldiers; they call themselves a tribe. I read a document that was addressed to the older Yaquis here from the Yaquis there, about this bunch that came in. They were troops—troops who were in action in Mexico, and they came here for ammunition and were going back. I recall a trip from El Paso to Tucson, Arizona, on the railroad train, where I met Mr. Hays and John K. Wren, Agent of the Department of Justice of El Paso. I had an extremely lengthy conversation with Mr. Wren and Mr. Hays on that trip. I—Mr. Wren and Mr. Hays had been friendly to me and I had a conversation with them. I asked them to dinner. In that conversation, among other things, I mentioned to Mr. Wren my interest in the Yaqui rebellion or revolution in Mexico. I have been interested in the Yaqui cause in Mexico for two reasons, one of

(Testimony of Jose Gandara.)

them was a sentimental reason,—it was my grandfather who was the first Mexican to go up in arms and to fight the Yaqui cause, about seventy years ago. I mean he fought for the Yaquis, to free their lands which had been taken away from them by their Central Government. I think I told Mr. Wren that; I must have. I also told him that—well, I told them that I was interested in the Mexican situation ever since our home in Chihuahua was ransacked by the Obregon soldiers and my mother died as a result of the raid there. That was in Chihuahua. As to whether, in this conversation, I told Mr. Wren of my interest in the Yaqui cause and I mentioned my grandfather, I suppose I did, because that was the [139—97] main feature, that he died in one of the main battles, some seventy years ago. In that conversation, I don't recall Mr. Wren asking me or mentioning to me anything about rifles. I don't recall, on the train, that he mentioned to me anything about any rifles. I did, at a previous conversation with Mr. Wren and Mr. Colvin and Mr. Hays in El Paso. I was called to the office of the Department of Justice where I was questioned for—I think it to be about an hour and a half and maybe two hours. I was asked and they tried to find if I had any connection with some arms shipments to Nogales and other points around here. It was at that time that Mr. Wren told me that Mr. Borgaro and Chito Valenzuela had been—had gotten away from some Border Patrol officers. He said that Mr. Borgaro and Mr. Valenzuela were deliver-

(Testimony of Jose Gandara.)

ing some arms somewhere, and that they left the store in a car and the Border Patrolmen went after them in a car, but he said that Mr. Borgaro and Mr. Valenzuela got away from them and they never saw their dust. Mr. Wren told me that; he also told me that if he had been there he probably would have caught them, which I believe he would. As to how long that was before I left on this train trip from El Paso to Tucson, it will be hard to say. I imagine it must have been only a few days, possibly a week or maybe ten days, I don't know. I don't recall the time that Mr. Wren had fixed as the time when Borgaro had been arrested, with reference to dates—I don't recall the date. I was in San Diego at the time of the alleged arrest of Borgaro, with my wife and children, my family. I never had any conversation with Borgaro with reference to the purchase or furnishing of any rifles; I didn't know Mr. Borgaro until after my arrest. I had never sent anyone to him to get any rifles or to purchase any rifles. I had nothing to do with these new rifles here that have been introduced in evidence; I had never seen them until they were brought in. I did not, at the Yaqui village, on the day that I met Mr. Wren and Mr. Hays, know how many rifles, or what kind of rifles, or whether they were new or old, that had been seized by the Government. I had no information that new rifles had been obtained, purchased, found or seized anywhere; the information [140—98] I had was in regards to ammunition and other provisions and things that I had taken down there.

(Testimony of Jose Gandara.)

This information was given to me by a man named Ramon Sanchez. He was a sort of a mozo of mine, and he had seen me deliver this ammunition and some of this stuff. He was arrested on the morning of the 24th and taken to the Border Patrol office, and he heard the Yaquis say that the ammunition and stuff that I had taken there had been seized, that not all of it had been seized, but they only found a part of it, but he never mentioned a word about rifles or anything like that.

I did not state to Mr. Wren on that occasion that I had furnished the new rifles and furnished the ammunition for the new rifles and for the old rifles; I spoke generally of ammunition. I did not make any such statement as he claimed, or quantity, or what for, or anything. As to whether the Borgaro incident was brought up on the occasion when I met these officers at Mesquital, Mr. Wren told me there was some boxes there that belonged to rifles, and they were the rifles Borgardo had brought in there. As to whether he said anything with reference to who the officers were, with reference to anything Borgaro was alleged to have done, we joked a little about that. He told me, jokingly, that Mr. Farrell was one of the men from whom Mr. Borgaro and Valenzuela had gotten away, and at that time I mentioned that I heard that Mr. Borgaro was very much scared and perhaps it was the other man who saved him.

I had not met Mr. Borgaro prior to my arrest, and at that time I had never had any conversation with

(Testimony of Jose Gandara.)

reference to the purchase of any rifles, nor had I sent anybody or furnished the money for the purchase of new or of any rifles. All that I bought, I bought myself. I delivered them myself. I mean ammunition—I never delivered any arms. I never gave very much importance to the question of arms, but the Yaquis would like to get all they could, and would like new ones, but I knew rifles were expensive and they could get plenty of them; it was ammunition they were out of.

All these Yaquis that I was dealing with and that came from Mexico were armed, and I knew the inside of that battle with Armenta, [141—99] and that they were in it, and were fighting, and inasmuch as they must have been fighting with arms, for they killed a number of men, so I knew they had their arms. I heard the inside of the battle of Armenta from the men who fought there, and the wounded I treated. As to whether I got an idea of approximately how long the battle had occurred before I was dealing with them—it was about five or six days, I think—it took them about five or six days to get from where they had the battle into Tucson. I told Mr. Wren that I was walking through the hills, preparing for my trip to Mexico. I was. I was doing that; it was to be a very severe hike and I wanted to prepare myself as best I could. I had been walking through the hills around here for, I suppose, a month or six weeks, with about sixty pounds—a knapsack. That was not altogether about six weeks—I mean, not continually, but for a period

(Testimony of Jose Gandara.)

of six weeks, I walked a great deal. As to whether I spent all of my time here in Tucson or that time—I said that for a period of six weeks before my arrest this continued—or had I gone east or west of here, I had been away several times. I didn't want to remain here long, because I was continually accosted by the Indians, by the Yaquis, who were anxious to get away. They were very anxious to go back. They sent two or three expeditions from the Yaqui River, to find out what had become of these hundred and fifty men, approximately, that left there on that expedition. As to whether I fixed a date or two upon which I expected to start—at times, when I was forced to say something to them, I said, "Well, it is all right; we will leave on such-and-such a date," more or less. I put them off two or three times.

As to why I was postponing my departure for Mexico with this ammunition, I was expecting momentarily a lifting of the Arms Embargo. I was communicating with friends in El Paso and expecting word from friends in New York, who were in touch with the situation, and expected at that time that the embargo would be lifted.

I don't remember having told Mr. Wren or Mr. Hays, on the occasion of our meeting in the Indian village, that I had expected [142—100] to leave the next night. I don't recall making that statement, and as to if I made it, in what vein was it made, I did do a good deal of joking with them, and said, "You spoiled a nice party. We probably

(Testimony of Jose Gandara.)

would have gotten away to-morrow night if you hadn't spoiled this party." But I didn't make any statement as to that and they weren't expecting me to make any. I did not expect to leave the next night, or the next night after—possibly within the next week, if the embargo had been lifted. I always needed four or five days preparation, after I knew we could leave, to get my things together.

As to whether these Indians I was dealing with, came to the United States, from what they told me, with the intention of abandoning the Yaqui cause and to cease from fighting, or for some other purpose—they were troopers—I mean, members of the Army, and they take that very seriously. It would be a disgrace for a Yaqui who belongs to the army to go away and not come back. There are some Yaquis residing here who are not army men. They may go down and fight once in a while, but they don't belong to the regular fighting group, but those that belong to the regular fighting group are not expected to remain away; they are expected to go and attend to their mission and then they are to return and fight. Captain Sebastian, who was one of the chiefs of the Yaqui tribe, of which Antonio Kupas, one of your witnesses, he is a lieutenant, came up to find out what had happened to them. They arrived here about the time I was arrested. I think Mr. Wren took them from Mr. Molino's house, together with a few other Indians who still had their guaraches on here. I remember distinctly he was one of the men Mr. Wren arrested.

(Testimony of Jose Gandara.)

When I was examined in El Paso, with reference to the shipment of rifles or some sort of ammunition to Nogales, I told Mr. Wren that I had inquired in various places as to the stock of ammunition and prices, and that I had asked these people in Nogales, that he referred to, as I did others, what the prices were and what quantity they had. I was always interested in knowing about the stock of arms and ammunition. I was interested because after the Arms Embargo became lifted, they would be hard to [143—101] get, and if I needed them I would need them rather quickly. You see, the embargo applies in Mexico, not only to the opposition of the Calles government or so-called government, but it also applies to Calles himself. It is a sort of a double-edged sword which the United States Government uses on Calles, to try to get him to change those laws that are retroactive and against the rights of property owners, and of course if the Arms Embargo was lifted, the Mexican government would buy all there was to be had, naturally. I was endeavoring to ascertain what stock there was to be had of arms and ammunition. I wanted to know what stock they had of shells and the price. I didn't make any deals, but asked for information. I did expect to espouse the cause of the Yaquis and go down to their fighting country, I intended to go down and talk to the chiefs, and after they had accepted me I—after they had accepted me as one of their leaders, or one of their men, I would have tried to provide some military man with military

(Testimony of Jose Gandara.)

experience—I haven't any myself—which would have directed their operations. They were fighting continually but, to my estimation, in a very ineffective way, with small bands and no co-ordination and no particular point in view.

I am against the so-called Calles government. I told Mr. Wren that. I told the Secretary of State, Mr. Kellogg, that. I told him I was going to engage in revolutionary activities, tending to the overthrow of the so-called Calles government, that I would do what was in my power to create or establish a government that would be honest, that would protect the lives and interests of the American people, that would protect their rights of property of foreigners, and that would live up to its international obligations. As to whether I stated that to Mr. Wren in my conversation, I took these things to be sort of secret, which should not be divulged like that. When I stated that I had told the Secretary of State frankly that I expected to engage in revolutionary activities, I did not, at that time, expect to violate any of the laws of the United States, and I so told them.

As to whether I furnished any provisions to these Mexico [144—102] Yaquis, well, I practically supported possibly sixty—say, fifty or maybe more, for about two months. It was the only way that I could keep them around. They were very anxious to get back. They expected—you see, a man named Juan Frias was very active on the organization of that group I mentioned, and that group that came

(Testimony of Jose Gandara.)

out here to get these arms, he told them he had lots of things here for them, and when they came and found that they had not, and found some had been arrested near Nogales by the Border Patrol, they were rather suspicious and very desirous of the first opportunity to get back.

I bought clothing for them. As to about how many, I suppose that I must have bought, altogether, about for a hundred. I bought the clothing at various stores in town—in Tucson. This clothing and supplies, these clothing supplies that I purchased were for the Yaquis that came across. They were practically bare you know. The country between here and the Yaqui River is very rough and they came through a lot of mesquite and things, and they were all scratched up and practically naked when they came in; also the Yaquis here made a collection among them to help these men. They drew money from various villages around Arizona, as they always do, when a bunch comes in, to help them out. As to when I say "bunch" what do I mean—a bunch of Yaquis that came up here intending to go back—I haven't heard of anyone else. As I know, a troop comes up here and get supplies and ammunition and goes back.

I hardly expected to lead these Yaquis when they left here. I don't know the country and they would not obey me, wouldn't pay any attention to me. I had never been over that trail they were going to take and knew nothing about it but from hearsay, I knew it was very rough, and I knew they

(Testimony of Jose Gandara.)

had no horses and would have to depend entirely on their knowledge of the country as to where we could get water and where to kill the game and cattle or whatever we had to feed upon. So my answer is that I did not expect to lead them. I had to go as one of them and use the same means of transportation as they used.

I did not have any connection with the arms or rifles [145—103] that are alleged to have been found in the possession of the defendant, Borgaro. I had no connection with any rifles whatsoever that were delivered to the Yaquis—I mean, I had nothing to do with it.

I had no connection with the alleged shipment of twenty-three thousand rounds of ammunition from Momsen, Dunnegan & Ryan Company, of El Paso, Texas, to Borgaro at Tucson. I heard about such a shipment, after the shipment had been found, I was told that Momsen, Dunnegan & Ryan had been forbidden by the Customs from exporting anything into Mexico as a result of that shipment. But I just heard of it after the thing came out. Prior to that time, I had not heard of it, or had any connection with it or brought it about, or had anything to do, directly or indirectly, with bringing that about. I did furnish canteens to the Indians and I furnished canvas. I did not, at the time I furnished any of these things, have an intent to violate any of the laws of the United States. I did not intend to violate any of the laws and I don't believe I was. I had never seen any of the Indians' rifles

(Testimony of Jose Gandara.)

while I was out there. They were rather secretive as to these things; they never showed anything of those that they had. Some of them buried them before they got into the village, out in the mountains somewhere, and others brought them right into the villages and dug up holes and buried them there.

I did not, in my acts and connection with these Yaqui Indians, make any effort to recruit anybody to join with them that had not come with them; they would not allow that, anyhow. That was their way of doing. I knew that all the time, and I never had any intention of recruiting a man. It would not do me any good to recruit men to take down, to fight a big army with a handful of men, and that is a violation of the law—you cannot recruit men and not violate the law. I knew that, because I knew that Estrada had been convicted because he started a military expedition and recruited men and started out.

Cross-examination.

As to whether I stated that I saw a telegram in the President's office or not in the President's office—that was taken out [146—104] of the President's office; President Calles. Friends of mine had that telegram. I don't recall their names. As to how many friends I had that had possession of that telegram, I suppose five or six, perhaps. Out of this five or six friends of mine, men whom I would designate as friends, I cannot remember a single name—I do not recall the names. As to

(Testimony of Jose Gandara.)

whether I cannot remember a single name out of the five or six men whom I stated were my friends, who would go into the President's file and take out a telegram for me—they did not take it out for me. I saw that telegram that had been taken out of the file and it was shown to me. I did not take it out myself or have it taken out. (The witness here stated to the Court: "Your Honor, I would prefer, if agreeable to Mr. Perrin, that the name or two of those that I have recalled not be mentioned, because it would mean the death of those two." To which the Court replied: "You were asked on direct examination with reference to that telegram and the Government, in the cross-examination, has a right to test your credibility in that regard, and it is your duty to answer the question." Whereupon the witness continued.) The name of one of those men was Julian Martinez. I don't remember the others. As to whether I didn't state a moment ago that I remembered the names of two of the men, No, I—No, I said I might remember some of them; I just remember some of them. There is another man, whose full name I do not recall—his last name was Aguirre. I saw the telegram about the 9th day of December—December, 1926. I did not talk to Mr. Kellogg. I did not state on direct examination that I talked to Mr. Kellogg; I said that I told Mr. Kellogg. I did not talk to him; I sent him a registered letter with all the information. I did not say that then Mr. Kellogg replied to me that the embargo on arms would be lifted. Mr. Kellogg

(Testimony of Jose Gandara.)

did not say anything about the embargo on arms and ammunition being lifted. As to what other government official I talked with about the arms embargo being lifted on arms and ammunition—what American official—none told me that it would be lifted. No American official told me that the embargo on arms and ammunition to Mexico would be lifted, making a statement of that kind. But from conversations I had, and [147—105] knowing the conditions and the statements that had been made by the President of the United States and by Secretary Kellogg in regard to the Nicaragua interference of the Calles government, I understood by those statements and the conversations I had with others, that it would be lifted. I know that the American Government is the one that placed that embargo upon arms and ammunition. And I know that the American Government is the only one that could lift that embargo. I knew, at the time, that if the embargo was to be lifted, the American Government was the only one that could lift it.

As to whether I talked to a single American official about it—I had had conversations with people that were close to official circles, and it was the understanding at that time, general understanding that it would be lifted. I stated that the Arms Embargo was applied to both the Calles government and the opposition to the Calles government, as a sort of a means of holding them down to certain promises that they had to live up to. It is not in reason for governments that are at peace

(Testimony of Jose Gandara.)

and still have embargoes on other governments with which they are in peace.

I stated that I had lived in the United States for a period of thirteen years. I do not speak English very well. And I was living in the United States at that time—at the time I purchased these arms and ammunition—not any arms—ammunition, not arms. I didn't purchase any arms—when I purchased ammunition. As to whether I was in a position that I could have made inquiry about the embargo, I was in a position to know immediately that the embargo was lifted. Friends that I have were to furnish me that information. The friends were—one of them was an attorney in El Paso, who—his name is A. W. Norcott. As to who were the other friends in El Paso, that is the only one that I could expect any communication from in that respect, and he was connected with friends in New York, who would tell him, and I expected, through his channel, to know about that. And I never made inquiry of any American official, any United States Attorney's office, anyone who would know about the embargo; I knew they would not disclose it if they intended to do that. I knew it was a violation of law to export arms to Mexico before the embargo [148—106] was lifted. Before the embargo was lifted because the embargo, if I may say, the embargo was not a regular law; it is a measure or decree that was used by the President for a special reason and it could be lifted by the President for special reasons, too; that is my understanding. I

(Testimony of Jose Gandara.)

also knew it was a violation of the law to recruit men in the United States—I knew that. In other words, I was not very familiar with the neutrality law, only certain things I knew about cases that had happened, that should not be done without violating a law. At least, my understanding was that you could purchase arms or ammunition, either one, in the United States at any time you chose. And as to whether I could have purchased it in the United States had the embargo been lifted, the same as I could before the time it was lifted—as far as purchasing is concerned, I could have—that is my understanding. As to why it was necessary to purchase ammunition and buy it out at Mesquital, in the hopes that some time in the future the embargo might be lifted, if I could purchase ammunition in the United States before it was lifted, the object of delivering that ammunition was this—the Yaquis were very suspicious of me, they were, not all of them but some of them. There were three or four factions in here, that was the de la Huerta faction, and there was a man by the name of Medina, Ogarte Medina, who was a general in one of the revolutions in Mexico. He was passing at one time, was posing as a friend of mine. He had intentions of getting the Yaquis to go with him, or follow him, or for him to go with the Yaquis, and there were two or three other parties that were interested also in getting the Yaquis, and they told, this man Medina especially told the Yaquis that I wasn't going to give them anything, that I was just fooling

(Testimony of Jose Gandara.)

them and that I didn't intend to give them anything. And at that time, to convince them of my veracity, I gave them that ammunition. I said I had not had anything to do with the purchase of twenty-three cases of ammunition found in Mr. Borgaro's store. I don't recall at any time of having tried to make a purchase of about thirty-five thousand rounds of ammunition from anyone, outside of the ammunition that I have admitted that I purchased in El Paso and furnished to these Yaqui Indians. I remember that I purchased other ammunition here in town and delivered to them.

[149—107]

As to whether it is not a fact that I was in Momsen-Dunnegan & Ryan in El Paso and tried to purchase from them thirty-five thousand rounds of ammunition, about the time that this ammunition, or shortly before the time that this ammunition was shipped to Mr. Borgaro, I don't remember having made any contract for the purchase of any ammunition other than that which I bought. As to whether or not is not a fact that I went into Momsen-Dunnegan in El Paso and asked about the price of rifles—I asked about the price of generally arms and ammunition at different places. I did not ask specifically about the price of rifles, but generally about the price of arms and ammunition. As to whether I asked Baraca Brothers the price of thirty-thirty Winchester repeating rifles, I asked the price of rifles, and also the price of thirty-thirty rifles. I did not also ask at that time of Baraca

(Testimony of Jose Gandara.)

Brothers in Nogales, Arizona, if they could make delivery of rifles about fifteen miles out of Nogales, Arizona. I asked them if they could deliver munitions that they were asked price on. I don't remember mentioning any particular place; I don't remember having done that.

Redirect Examination.

I was asked with reference to having talked to any Government officers with reference to the raising of the embargo, and I said that I had not. Outside of the statements of President Coolidge and Secretary of State Kellogg, I read press reports of the apparent or probable intention of the Government with reference to the embargo; it was my impression at that time that it was practically a certainty that the embargo would be lifted. I also heard some man,—I don't recall his name now; it was Morton or something like that,—who is very close and I think connected with the American Embassy in Mexico City, who said that he was practically certain that these things which had happened, which caused the statement of the President Coolidge and Secretary Kellogg, indicating that situation would bring about that change. I knew that that embargo had been placed as a sort of a bond or restraining—if I may call it like that—a restrainer on the Calles government, and when he violated the laws of friendship [150—108] as in that he sent arms and ammunition to enemies of the United States, there was nothing else to be

(Testimony of Jose Gandara.)

concluded except that it would be lifted. With reference to what counsel has examined me with reference to whether it was a fact that I could buy ammunition after the embargo was lifted, just the same as it could be bought before it was lifted, and as to whether it was a fact that the probabilities were that I could obtain ammunition after the embargo was lifted, or whether the contrary was true, that I probably could not purchase ammunition after the embargo was lifted, it would have been very hard after the embargo was lifted, because, as I said before, the Calles government would be the first one to place orders for everything available.

TESTIMONY OF ESTEBAN BORGARO, FOR DEFENDANTS.

ESTEBAN BORGARO, one of the defendants, being duly sworn, testified in his own behalf as follows:

Direct Examination.

My name is Esteban Borgaro. I am living at the present time, at 28 East 15th Street, in Tucson. I was born in Mexico, in the Italian Consular office. I am thirty-eight—going to be thirty-eight; I was born the 13th of November. I have lived in the United States approximately, I think, about nine or ten years. During that time I lived in Los Angeles with my uncle, Secundo Guasto, who was the president of the Italian Company. I have also lived in Bisbee; I worked for the Copper Queen

(Testimony of Esteban Borgaro.)

and I worked for the C. & A. I have lived in Tucson about seven years. As to what is my business and occupation since I have been in Tucson, I have general merchandise. I have guns, ammunition, supplies, Mexican and Indian curios, bicycles—so many things, it is hard for me to mention all the lines I have. My store is located at 41 Meyer Street, Broadway and Meyer. I do not know Mr. Gandara here. The first time I met him is right here in this courthouse. As to whether I purchased these guns with reference to which there has been testimony, and also some other new guns that are on the floor, on the other side of the boxes, well, I know the new ones they took out of my store. I do not know the old ones; I don't know anything about it. I bought these guns from San Francisco. I [151—109] remember when I ordered them. About the 6th I was to see Mr. Conger, who is an old salesman, that has worked a good many years, and sold us so many other things before. The guns got here about the 9th of June, 1927. I went to the American Railway Express office, as has been testified to here, and made inquiries with reference to the shipment. The shipment belonged to me. They sent it down to my place. They sent it to my place on the ninth, in the morning, about ten o'clock—the ninth of June, this year, 1927, about—around ten o'clock. As to what I did with any of these guns. Before I took, well, before I ordered these guns, a man went into the store, and several others, trying to buy guns from me, and I says: "Well, I

(Testimony of Esteban Borgaro.)

haven't got these in stock right now, but I can get them for you, the other things I haven't got, but I don't know any of you fellows and I want to have a deposit to order the guns for you," so they deposited four hundred dollars, so I gave a receipt for it and I ordered the guns. Then I went to see Mr. Conger that same day, and he lives out on Speedway and I—we went for a ride, my wife and myself and two girls, the two nieces of my wife. We went for just a ride, and my wife say, "Let's visit Mr. Conger," for Mr. Conger was living on Speedway, so we went to Mr. Conger's house, and I asked him if he would be able to get some guns for us, and he said, "I think I can; I can wire to the house and find out." "Well," I says, "I am losing so many sales, I wish to have these as soon as possible." That was about the 6th. As to whether the guns came, in pursuance of that order, about the 9th, before that, I want to tell. Mr. Conger wanted to find out about the money, to be sure, because four hundred dollars wasn't enough to cover that amount, and I haven't much money at the bank then, because I just paid a note of mine on the house we bought on South Stone Avenue, and I went to borrow a thousand dollars from the bank, and then Mr. Conger was with me, and he sent the order. That was the 6th. And the 9th the guns were delivered down to my place there. As to what I did, if anything, with any of these guns that same day, well, that same day they came, several men, and they want to find out about the

(Testimony of Esteban Borgaro.)

guns, or "Have you [152—110] guns?" I say, "Yes; I got them right here," and "Well," they said, "I want two," and another said, "We want two," so I sold approximately twenty-four—no, twenty-five, that is one, another man, the man that was going to take care of the guns, bought one, and then my wife, she already have sold four of them.

As to what I did with any of the guns that I received in the morning, that man ask for accommodation to deliver, "Well," he said, "In any place where you buy plenty of merchandise, they always deliver it." "But," I said, "we have no truck." He said, "You have a car. Can you do that for me?" "Well," I says, "Before I do any delivering I want to be sure of the money," and so he paid me the balance and then I went and take the back seat out of the car, so I could make better room, and I loaded twenty-five guns in my car and I put a canvas over them, so none of them peep over, you know, fall from the car, and I went with that man. I did not know who this man was; I really didn't know. I think his name is Valenzuela. I have since learned his name; the first time I heard of him. As to where I went with this man, Valenzuela, he told me he was going to deliver at a house at a place called Millville. I never was there in my life before, and I went with him in my car. I understand I was to deliver this to a house, on that understanding, and we went west on Congress—what do you call? West on Broadway and then turn to the left on Main Street, and then we turn

(Testimony of Esteban Borgaro.)

to the left, about two blocks from there, and then to the right, and I said, "Well, you have to tell me; I don't know which way. You tell me Millville, and I don't know which way." He said, "Millville is on the left side of town," and I was sitting driving and he was leading me, you see, and we went on to deliver at the house, and I said to him, "Where is the house?" and at the same time the train was passing by, and we couldn't go straight and have to go around away past,—that part of the track, you know, is very hard to get across, because they have no bridge or nothing, or passway, or whatever you call it.

As to what the man said with reference to delivery at the house when we got there, well, he says, "The house is a little further," [153—111] and I don't find any house and I says, "Well, where is the house? You are going too far. You told me was a house near Millville. Here is Millville, and no house here. "Oh," he says, "the house is a little further, a little further," and then he forced me to go and I went to the place, almost to the wash, you know, they call—Mr. Wren says arroyo—and it is hard caliche there, it is almost like the formation of rock, and I saw on the side, I saw a truck there, a Ford truck, with several men, ten or twelve men, waiting there for the guns. Well, I don't even move out of my car. I just keep my sitting and they unload the guns from one car to another; they pass by one man to another and get it unloaded and then they take the canvas that I had over them.

(Testimony of Esteban Borgaro.)

I said not to take it and he said, "Well, we bought plenty from you; can't we have that piece of canvas?" I said, "Well, take it." What can I say? Then I went back to town and went to the store.

Going back to this trip, I did not look back out of my car at any time, at the time I left the store and went along Main Street, and south and east, as I have testified; I never did. I didn't have to. I have a glass in my car and can see several blocks back without looking back. I suppose we were going a little better than twenty but not over thirty. As to the character of the streets down there, they are very narrow in just this part of town; it is what they called the "Old Pueblo" and in some places there is not room for two cars to go back and forth. The roads were rough; and this man forced me to go ahead when I saw there was no house there. He said to me, "Well," he says, "if you don't keep on going, I am going to make it hot for you, and you will be in trouble." I said, "What do you mean by that?" He says, "I got so many things I could do with you, if you don't go," so I have to do whatever he want me to do, because it seems to me like he have something in his hand, I don't even look to his face, just keep on riding,—driving, I mean. At the time I sold these guns, or ordered them, or delivered them, I had no intention to violate the laws of the United States. After Mr. Wren was at the store, I had made some inquiries of somebody as [154—112] to whether it was lawful to sell arms and ammunition in the United States;

(Testimony of Esteban Borgaro.)

I asked Mr. Ford if it was an embargo, local embargo, to sell any guns, because I don't know what embargo was. You see, it was a strange word for me. I never studied in English, only in Italian and Spanish, and you know I know to speak the English only what I learned in the store; I couldn't speak a word of English when I came here. I thought embargo meant local sales you would make. As to what Mr. Ford told me it meant, he said, "You can sell all the guns you want as long as you get the money; you don't care what they are going to do with it." I really did not know, at any time, from the time of taking the order until I made the delivery, that these guns were not to be used for a lawful purpose. I never ask and I have been selling guns since Mr. Davant was in business there, since which I bought him out, and my wife had a half share in that business, and they were selling guns ever since, for years and years selling guns and ammunition. I do sell many guns. I also sell much ammunition; lots of times I buy right here from the Sporting Goods and Steinfelds, which are the only wholesalers in ammunition and guns, I buy forty and fifty and sixty dollars every day.

As to the testimony with reference to the twenty-three thousand rounds or twenty-three cases of ammunition, of cartridges, I ordered these from Mommson-Dunnegan-Ryan Company at El Paso, Texas. Somebody had spoken to me before that time with reference to purchasing this ammunition. I bought it because they give me a long date, what you call

(Testimony of Esteban Borgaro.)

future order, to get them. He was—the salesman from Remington Arms Company was at the store and he says, “Mr. Borgaro, why not buy plenty, so as not to be buying all the time in town? You can save money. I could give you to pay January first, and give you a two per cent discount, so you don’t have to pay until January. You buy more than that here in a very short time and you can save money by buying quantities like that.” And I don’t think they will do anything, and I said, “Maybe, it is too many; I am afraid to have too much money tied up,” and he said, “Well, you will sell these before December, and have your money back, and save buying every day here and paying,” and so I had been [155—113] buying forty to sixty dollars every day here in town, and so I thought I could pay for it later and turn that money into something else, and that is the reason I bought this ammunition. I had no agreement or contract with any person to resell it or to sell it again. That came by freight.

I think it was about quarter after one P. M. when I started to make delivery of these guns—when I left the store. I got back until nearly three o’clock. I think I ate dinner in the meantime at home. When I got back I met Mr. Wren. That is the first time I met him, at the store.

(Court here adjourned for the noon recess, and upon return the witness resumed his testimony on direct examination.)

I testified here before lunch that I got back to

(Testimony of Esteban Borgaro.)

the store on June 9th, 1927, and met Mr. Wren there. He was with several Border patrolmen. I really don't remember how many were there. I know Mr. Caldwell very well. He was there and Mr. Farrell was there. Giving my version of the conversation I had with Mr. Wren that afternoon when he first came in he says, "Where are the guns?" I said, "Well, part of those are in the store," "And where is the other part?" he said, I said, "I delivered those." He said, "Well, can you show me just the place where you delivered them?" I said, "Yes, sir, with very much pleasure I will show you the place." "Well," he said, "get in my car"—and I think it was a Chevrolet car, a touring car, and I went with Mr. Wren, Mr. Farrell and Caldwell, Mr. Caldwell. As to what I told them with reference to any delivery that was to be made to a house, "I thought I was going to deliver these to a house, but I will show you the place." I didn't say anything about that to Mr. Wren until he asked me. He said, "Do you know the place where they were delivered?" I said, "Yes, I can show you the place." I just went in the car with them, and I showed them the way we turned and which way we went, and with the same turns, very nearly the way we did, the way I did with this man that I delivered the guns for, and I took him to the place where the delivery was made by me to these ten or twelve men. As to whether I had any further [156—114] conversation with him there, well, he talked a few things, in a way, you know, but I really

(Testimony of Esteban Borgaro.)

don't remember exactly what he was talking to me. As to whether anything was stated with reference to my knowledge of the fact that these guns were for revolutionary purposes, he says to me, "Didn't you realize that these guns were being sent into Mexico?" I said, "No, sir, I don't realize until just now. I realize now that they were for that purpose, maybe, but I am not sure about it," I says. He talked quite a bit to me about that, you know, and I said, "Mr. Wren, I am really telling you the truth; if you don't want to believe me, it is up to you, but I am not a liar." He insisted very bad to talk to me about these guns, and that I knew— Well, he ask me in a way, wanted to know whether I knew folks. "Do you know Mr. Gandara?" I said, "No, sir, I do not." "Well, do you know—" some other names that I really don't remember. I said, "No, sir, I do not." And then he said, "Well, you know very well that these guns were bought to be sent into Mexico." "No, sir, I do not," and he insisted very much, and he said to Mr. Caldwell, "Well, what do you think about this fellow? Do you think he is telling me the truth?" and Mr. Caldwell he says, "No, I don't think so," and that is the way he answered, and in the meantime Mr. Farrell went and see another wash, the next to that one, and he look around and he says, he try to dig with his foot in several places, and he come and says, "Mr. Borgaro, I don't think that was the place where you deliver the guns. I think that other place was the one you deliver the guns."

(Testimony of Esteban Borgaro.)

I said, "I really don't remember; I am not acquainted with the place; it may be here and may be over there. I don't know exactly the place." And that was the place, or about the place, where the actual delivery was made, just as close as I can tell. Well, according to the way I noticed, it was right behind the Southern Pacific shops, you know, the machine-shops and the boiler-shops; I was about, maybe three hundred feet or around four hundred feet. I did not know at the time that these guns were ordered; or at the time that I started out with them to make delivery, that they were for revolutionary purposes [157—115] or to be taken into Mexico. As to whether or not this sale was made by me in good faith, in the course of my business as a merchant—just the same as any other business to me, you know. Somebody else came down there and tried to get me to say that I knew at the time I took the order for the guns that they were to go to Mexico and were for revolutionary purposes; these two gentlemen (indicating), Mr. Wren and the United States Attorney. Mr. Perrin went down there to the store. He didn't ask me any questions, you know; Mr. Wren was the one asking me all the questions. Mr. Perrin only asked me how many were there at the store, and if I knew these were for revolutionary purposes, and I said "No," and a lot of other things that I don't remember, but just about the same matter, you know, about the rifles. I became suspicious that they were to be used for a wrongful

(Testimony of Esteban Borgaro.)

purpose, an illegal purpose when we crossed the track and that man could not find the house, and I could see he was trying to fool me and he did, because I was—I really understood I was going to deliver these to the house. And I became suspicious then that this delivery was made out in the desert. I did not, at any time during the course of this transaction that I had with this man whose name I do not know, conspire with Jose Gandara, Bishop Navarette, Chito Valenzuela or with any other person to violate the laws of the United States. I was never interested in Mexican politics when I lived in Mexico. As to whether I left Mexico for any political reasons or for personal reasons, I left the country on account of the peace, I want to be in a peaceable country, like the United States is. But I have never taken any part in Mexican politics, either while I lived there or since coming here; never in my life.

Cross-examination.

I stated that when this ammunition was ordered that the company from which I ordered it would not require me to pay for it until the following January, and that I was to get a discount on it. I was to receive, on January first, two per cent discount. That is the way I understood, and I was to be allowed that two per cent in [158—116] allowing the bill to run—that is, if the bill were to be paid by the first of next January. As to whether I am familiar with the trade discounts that are allowed

(Testimony of Esteban Borgaro.)

by various firms, the various mercantile firms, this was a special offer by the salesman of the Remington people, direct from the factory; it is not from Momsen-Dunnegan. That is the way I understood it—that anyway I was to be allowed two per cent discount when I ordered this ammunition in June, I was to be allowed a two per cent discount if I paid for that the next January. (Counsel here submitted invoice of Momsen-Dunnegan-Ryan to witness and asked him to look at the figures on it, which the witness did and said:) Two per cent, ten days—well, I made a mistake. I have stated that I have lived in the United States for a period of ten years, just about. As to whether I spoke English about as well during June of this year as I do now, I been learning a few words, some since I have been in court here—I learned a few words that I did not know before, because I never was arrested in my life. But I spoke English just about as well as I do now, and I understood pretty thoroughly some of the things that were told me—not everything. As to whether I understood pretty well what the men who talked to me about ordering the rifles said, well, they wanted some rifles. They did not speak in English; they spoke in Spanish. I understand Spanish pretty well. I understood pretty well when Mr. Wren was down talking to me, some things—he used high words and I really did not understand some of the conversation. I did understand what he said when he asked me where the rifles were. I never did tell him they were all

(Testimony of Esteban Borgaro.)

in the cases at that time. And after that he didn't tell me that the Border Patrolmen saw me take them out; he did say something to me about that, but I never did say anything. As to what the occasion was of his telling me that if I did not tell him they were all there—I tell him, “Part of these are inside of the store and the other part, I deliver them,” and he want to know if I knew the place where I delivered them, and I said, “Yes.” No, I didn't tell him first that I delivered them to a house, and then after that I told him that I went down South Main Street and then took them out to Millville and showed them the [159—117] place where the delivery was made to a truck, to the men there with a truck. Describing those men that were on the truck—they all speak pretty good Spanish, I thought they were Mexicans. I am mighty sure—they spoke just as good Spanish as I can. I know a Yaqui Indian from a Mexican; I don't think they were Yaquis; all Mexicans every one of them. As a matter of fact, I did not take those rifles down to Mesquital and deliver them down at Mesquital at the house of Antonio Molino, with Chito Valenzuela. I did not do that. As to whether when Mr. Wren came down to my place he used strong language on me, well, he didn't treat me very well, you know, really, because I never was treated like that in my life. He kind of imposed on me, and I know he was an authority and I have to respect him and I told him everything I know about it. He said to me, “You see, you are in a hell of a shape; you

(Testimony of Esteban Borgaro.)

see, you are up against it. If you don't tell me the truth about it, you will be in an awful mix," and I was—I told him, "What do you mean by that"? He said, "Well, I represent the Department of Justice, and I want you to tell me exactly the truth, what you know, and where you delivered the guns," and I said, "Yes, I will do that," and he said, "Well, are you willing to go with me?" and I said, "Yes," and I went with Mr. Wren and Mr. Caldwell and Mr. Farrell. And I went out to this arroyo. I went to the arroyo, I went to the place that I delivered the guns. As to telling the jury how I took those guns off of my car and delivered them to the truck, I didn't take them off the car. The men that were in the truck, waiting for us, delivered them to the truck. The truck pulled up alongside of the car. It pulled right along beside the car, and that was out near Millville, southeast of town. All that country out there is not sandy, more or less, that place where we were is kind of a caliche formation there, very hard rock. Not rock; it is all caliche, that is what I understand. It is not rock, but is not a sand place, either. The ground is so hard that a truck would not have left a track, and the reason they couldn't see any truck tracks out there is because it happened to be hard ground and the truck would not leave any tracks. I don't know if Chito is the man who went down with me with the rifles. He was a heavy-set man, about my size, wearing a mustache, I think. He was a Mexican, I think. [160—118]

The defendant, at the time the Government rested, and before putting any witnesses on the stand in his behalf, moved the Court to instruct the jury to return a verdict of not guilty, which motion was renewed at the close of the case, and which motion was as follows:

That the defendant move the Court to instruct the jury to find the defendant not guilty, for the following reasons:

Because no credible evidence has been introduced to connect the defendant with the conspiracy charged in the indictment.

Because no evidence has been introduced that would warrant the Court in permitting a verdict of guilty to stand.

Because the undisputed evidence shows conclusively that if any military expedition was ever begun, set on foot or provided or prepared for, within the sense of the statute, it was begun, set on foot, provided and prepared for in Mexico and was being carried on and to be carried on from Mexico and not from the United States.

Which motion was denied when first presented, and likewise denied when presented at the close of the case, to each of which rulings of the Court the defendant thereupon excepted. [161—119]

INSTRUCTION REQUESTED BY DEFENDANT.

BE IT REMEMBERED, that during the trial of this cause and at the proper time and before the

jury retired to consider their verdict, the defendant in writing requested the Court to give the jury the following instruction:

“The jury are instructed, if prior to the commission of any of the acts charged in the indictment, a revolution or revolt of the Yaqui Indians was in existence in the Republic of Mexico in which armed forces of the said Indians were in conflict with the military forces of the Mexican government, and if members of such armed forces of the Yaqui Indians came to the United States for the purpose of securing munitions of war and provisions, and then returning to rejoin the forces of such Indians in Mexico, and the defendant Gardara furnished ammunition or provisions only for such Indians as had come from Mexico, and intended to return to Mexico, and not to recruit or secure other Indians to go to Mexico, then such furnishing of ammunition and provisions would not constitute either a military enterprise or a military expedition as those terms are used in the statute of the United States on which this prosecution is based, and the defendant Gardara would not be guilty of beginning, setting on foot, or furnishing means for any military expedition or military enterprise, and a conspiracy merely to furnish ammunition and provisions to Yaqui Indians who had come from Mexico and were intending to return to Mexico under the circumstances above mentioned, would not be an offense against the United States.”

Which instruction the Court refused to give, to

which ruling of the Court the defendant thereupon excepted. [162—120]

Whereupon the Government rested and the defendant rested, and counsel for the Government and counsel for the defendant presented their arguments to the jury.

BE IT REMEMBERED, that during the trial of this cause further proceedings were had; the Court charged the jury as follows:

INSTRUCTIONS OF COURT TO JURY.

Gentlemen of the Jury, it is not my purpose to sum up the evidence in this case; counsel have already done that. To do so might not serve any useful purpose and, besides, it would not relieve you of the responsibility of finding the facts for yourselves.

The indictment in this case charges the defendants, Jose Gandara and Esteban Borgaro, who are now on trial, with certain other persons therein mentioned, with the commission of an offense in violation of Section 37 of the Penal Code of the United States. That Section is as follows: "If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars or imprisoned not more than two years, or both."

Thus you will observe that the specific offense

with which these defendants stand charged is that of a conspiracy, and if they are convicted, or either of them is convicted, he or they will be subject to punishment under the law I have just read. The matter of the punishment, of course, is a matter for the court,—an unpleasant duty, frequently, Gentlemen, but it devolves upon the Court.

The court is made by the law the Judge of the law and the jurors are made the Judges of the facts. It is your duty to pass upon the facts, and the issue for you to determine in this case is the guilt or innocence of these two defendants now on trial. [163—121]

The indictment alleges that the object of the conspiracy, or, rather, the indictment alleges that the defendants “did knowingly, willfully, unlawfully, feloniously and corruptly conspire, combine, confederate and agree together and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States of America, to wit, the offense of knowingly, willfully, unlawfully and feloniously beginning, setting on foot and providing and preparing the means for a certain military enterprise to be carried on from the State of Arizona, within the United States of America, against the territory of a certain foreign country, to wit, the Republic of Mexico, with whom the United States, throughout said period of time, were at peace, which said offense is defined by Section 13 of the Federal Penal Code, that is to say, at the time and place aforesaid, the said defendants did conspire to set on foot and provide and

prepare the means for an enterprise, having for its object the inciting of armed rebellion, in the Republic of Mexico, and of the citizens of said Republic of Mexico, against the Government and authority there, and the furnishing of arms, munitions, supplies and money for carrying on and supporting such rebellion, and an enterprise which was to be carried on from Tucson, Arizona, aforesaid, by the said defendants devising the plans of the same there. The said conspiracy, combination, confederation and agreement was continuously, throughout all of the times in this indictment mentioned, in operation and existence." "And the Grand Jurors, on their oaths, do further represent that in furtherance of said conspiracy, and to effect the object and purpose thereof, and on or about the 25th day of May, 1927, near Tucson, in the State and District aforesaid, the said defendants Jose Gandara and Bishop Navarette did meet with certain Yaqui Indians and did urge said Yaqui Indians to band together and form a warlike enterprise, and did urge, exhort and entice said Yaqui Indians to prepare to enter the said Republic of Mexico from the said State of [164—122] Arizona under the leadership of the said Jose Gandara, and to make war upon the said Republic of Mexico," and to commit and do other overt acts set forth in the indictment, which were read to you at the beginning of the trial, and which you will be free to read when you retire to consider your findings—and you will be furnished with the original indictment for that purpose. I think it is unnecessary that I should

read them, in view of these facts.

Now, bear in mind that the offense with which these defendants are charged is that of a conspiracy. It is alleged and claimed by the Government that the offense which they conspired to commit was a violation of Section 13 of the Criminal Code, and it is alleged in the indictment that they did conspire to violate the law of the United States in that they did conspire to violate said Section 13.

Now, in order for you to properly determine the issue of the guilt or innocence of the defendants in this case, it will be necessary that I read that section of the law to you and explain what it takes to constitute the offense under that law. That section, as amended, is as follows:

“Whoever, within the territory or jurisdiction of the United States or any of its possessions, knowingly begins or sets on foot, or provides or prepares a means for or furnishes the money for, or who takes a part in, any military or naval expedition or enterprise to be carried on from thence,”—that is, from the United States—“against the territory or dominion of any foreign prince or state, or of any colony, district or people with whom the United States is at peace, shall be punished” as therein provided.

You will observe, Gentlemen, that the enumerated acts which constitute the offense under this Section 13, are all in the disjunctive. To begin the military expedition spoken of is an offense within the statute. To begin it is to do the first act which may lead to the enterprise. The offense is consummated

by any overt act [165—123] which shall be a commencement of the expedition, though it should not be prosecuted. Or, if an individual shall “set the expedition on foot,” which is scarcely distinguishable from beginning it. To set it on foot may imply some progress beyond that of beginning it. Any combination of individuals to carry on the expedition is “setting it on foot” and the contribution of money or anything else which shall induce such combination may be a beginning of the enterprise.

To provide the means for such an enterprise is within the statute. To constitute this offense, the individual need not engage personally in the expedition. If he furnish the munitions of war, provisions, transportation, clothing, or any other necessaries to men engaged in the expedition, he is guilty, for he provides the means to carry on the expedition.

It must be a nation or people with whom we are at peace. “In passing the above law, Congress has performed a high national duty”—and in quoting this I am reading from a charge of one of the Judges of the Supreme Court. “A nation, by the laws of nations, is considered a moral being, and the principle which imposes moral restraints on the conduct of an individual applies with greater force to the actions of a nation.”

“Justice,” says Vattel—who, by the way, was one of the great authorities on International Law and wrote a celebrated work on International Law—“is the basis of society, the sure bond of all commerce. Human society, far from being an intercourse of

assistance and good offices, would be no longer anything but a vast scene of robbery, if there were no respect to this virtue, which secures to every one his own."

"It is still more necessary between nations than between individuals, because injustice produces more dreadful consequences in the quarrels of these powerful bodies politic, and it is still more difficult to obtain redress." [166—124]

"Before a jury can convict, it must be proved to their satisfaction that the expedition or enterprise was in its character military; or, in other words, it must have been shown by competent proof that the design, the end, the aim, and the purpose of the expedition, or enterprise, was some military service, some attack or invasion of another people or country, state or colony as a military force."

"This statute does not require any particular number of men to band together to constitute the expedition or enterprise one of military character. There may be divisions, brigades and regiments, or there may be companies or squads of men. Mere numbers do not conclusively fix and stamp the character of the expedition as military or otherwise. A few men may be deluded with the belief of their ability to overturn an existing government or empire, and laboring under such delusion, they may enter upon the enterprise. * * * Evidence showing that the end and objects were hostile to or forcible against a nation at peace with the United States characterizes it, to all intents and purposes, as a military expedition or enterprise."

The words "military enterprise," while including a military expedition, have been held by the Supreme Court to give a wider scope to the statute than the latter term, and that a military enterprise may consequently include various undertakings by single individuals, as well as by a number of persons. It has been held that this Section does not require that the expedition should have actually set out or any particular number of men, the crime being completed by the organization only. The words, "to be carried on from thence" are employed in the sense of carrying out, or forward, "from thence."

Reading again from a case considering this statute, "The statute defines the offense disjunctively as committed by every person who, within the territory or jurisdiction of the United States, knowingly begins, or sets on foot or provides or prepares [167—125] a means for, or furnishes the money for, or who takes part in, any military or naval expedition or enterprise to be carried on from thence, against the territory or dominion of any foreign state, district or people with whom the United States is at peace."

"Begin is to do the first act, to enter upon; to begin an enterprise is to take the first step; the initiatory movement of an enterprise, the very formation and commencement of an expedition. To 'set on foot' is to arrange, to place in order, to set forward, to put in way of being ready. To provide is to furnish and supply; and 'to procure means' is to obtain, bring together, put on board, to collect."

“The beginning, the setting on foot, or the providing or procuring materials for such an expedition or enterprise must be within the territory or jurisdiction of the United States, and to be carried on from thence, against the territory or dominions of some foreign state, colony, district or people, with whom the United States were at peace.”

“A single individual may begin or set on foot a military expedition or enterprise, and a single individual may provide or prepare the means for such an expedition or enterprise.”

“Everything must have a beginning.”

So much for the section which these defendants are charged with conspiring to violate.

And I might add here, Gentlemen, that the Mexican Government is not on trial in this case. The Government of the United States is now and was, during all of May and June of this year, at peace with Mexico. And this is true, regardless of the fact, if it be a fact, that occasionally the relations between them call for conversations or conferences.

And citizens of the United States and residents thereof who are not citizens should be careful to do nothing that might tend to disturb our friendly relations with that nation. [168—126]

While this is true, only those who are proven guilty of a violation of this statute should be convicted.

Having explained to you the law which these defendants are charged with having conspired to violate we now will consider the conspiracy charge set forth in the indictment.

A conspiracy consists of a combination between two or more persons for the purpose of accomplishing a criminal or unlawful object, and in this connection I charge you, as a matter of law, that the objects of the conspiracy charged in the indictment, that is, the violation of this neutrality law which I have just read to you, were unlawful objects. And this is true, notwithstanding the fact, if it be a fact, that a number—I believe the number was admitted to be between one hundred and forty and one hundred and fifty Yaqui Indians, may have come to the United States for the purpose of procuring arms and ammunition or may have been recently engaged in making war on the Republic of Mexico, in Mexico, before they arrived in the United States.

The conspiracy is alleged to have been formed between the first day of May, 1927, and the 20th day of June, 1927. June 19th, therefore, is the last day of the alleged period of the conspiracy.

“In all cases of conspiracy, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all, and is evidence against all. But only those acts and declarations are admissible under this rule, which are done and made while the conspiracy is pending, and in furtherance of its object.”

After the conspiracy has come to an end, whether by success or failure, the admissions of one conspirator, by way of narrative of past facts or events, are not admissible in evidence against the others. Evidence of acts and declarations made by Gandara

or any other person after June 19th are not admissible against the defendant Borgaro, and should not be considered against him, nor are they admissible against Gandara as testimony tending to establish or proof of a conspiracy, but acts and declarations made by Gandara after [169—127] June 19th are admissible against him solely for the purpose of throwing light upon his acts and conduct during the existence of the conspiracy, if there was a conspiracy, as charged in the indictment, between the first day of May, 1927, and the 20th day of June, 1927, as admissions against interest. [170—128]

You will observe, Gentlemen, that the indictment alleges that the conspiracy was formed among Jose Gandara, Esteben Borgaro, Junior, Antonio Valenzuela, *alias* Chito Valenzuela, and Bishop Navarrette and the charge is that they did combine and confederate together to violate the laws of the United States, and with divers other persons, whose names are to the Grand Jurors unknown, so that in order to convict, in the event that you do not find both of these defendants guilty of the conspiracy you might find one of them guilty—in other words, if these two men did not conspire, as charged in the indictment, between themselves, but you believe that one of them did conspire with one of the other persons named in the indictment, or with those whose names are to the Grand Jurors unknown,—for instance, one or more of the Yaqui Indians—then, one of the defendants may be found guilty, the one so conspiring, and the other acquitted.

In other words, if the defendant Gandara conspired with the Yaqui Indians or any other person and not with Borgaro, he might be convicted and Borgaro acquitted, and if Borgaro conspired with Chito Valenzuela, knowing that conspiracy and the object thereof, or with any other person other than Gandara, he might be convicted.

To sustain a charge of conspiracy, the Government need not furnish direct proof of the unlawful plan or agreement, that is, an eye-witness, but such charge may be sustained by evidence showing a concert of action in the commission of an unlawful act, or by proof of other facts from which the natural inference arises that the unlawful overt act was in furtherance of a common design of the alleged conspirators.

The offense charged in the indictment depends in no way upon the success of the conspiracy. It is not at all necessary that the object of the conspiracy be accomplished. It does not follow that because a conspiracy to commit an unlawful act embraces an unsuccessful attempt, it is not a crime punishable under the law. The conspiracy is the offense which the statute defines without reference to whether the crime which the conspirators have conspired to commit is consummated. [171—129]

It is not necessary, in order to constitute a conspiracy, that all of the conspirators should have agreed upon the unlawful object to be accomplished at one and the same time. And likewise, it is not necessary to constitute a conspiracy, that two or

more persons should meet together and enter into any explicit or formal agreement for the unlawful scheme, or that they should directly, or by words or in writing, state what the unlawful scheme is to be, and the details of the plans or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons in any manner, or through any contrivance positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. A tacit understanding is one which, although not expressed, arises from the nature of things. A mere agreement or combination to effect an unlawful purpose not followed by an act done by either of the parties to carry into execution the object of the conspiracy, does not constitute the offense. There must be both the unlawful agreement or combination and an act or acts done by one or more of the parties to effect the illegal object or design agreed upon to make the offense punishable under the statute.

In other words, the Government must show, first, the conspiracy or acts from which the conspiracy may be inferred or arrived at, and it then must prove what is known as the overt act was done to carry into effect or to consummate the object of the conspiracy. The Government has alleged in the indictment that these defendants committed ten overt acts in furtherance of the conspiracy. It is not necessary that the Government should prove that they did commit all ten of these acts. It will be sufficient, if the conspiracy is established, if the Government were to prove that one overt act, men-

tioned in the indictment, was committed, and while only ten have been alleged and only one needs to be proven, others not mentioned in the indictment may be proven.

The elements of the crime of conspiracy are: One, an object to be accomplished, which in this case must be the commission of an offense against the United States; a violation of Section 13 of the Penal Code, the neutrality law which I have just read; two, a plan or scheme embodying the means to accomplish the object and, three, an agreement or understanding between two or more persons, [172—130] whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the scheme, or by any effectual means. Fourth, an overt act, set forth in the indictment, by one or more of the conspirators to effect the objects of the conspiracy. As I said before, those overt acts are set forth in the indictment and are numbered from one to ten, inclusive.

To require an overt act to be proven against every member of the conspiracy, or a distinct act connecting him with the combination, would not only be an innovation upon established principles but would render most prosecutions for the offense nugatory.

Guilty connection with the conspiracy may be established by showing association by the persons accused in and for the purpose of prosecution of the illegal object. Each party must be actuated by an intent to promote the common design, but each may

perform separate acts or hold distinct relations in forwarding that design.

And on the question of intent, it is the law that the intent with which an act is committed, being but a mental state of the parties accused, direct proof of it is not required nor, indeed, can it be ordinarily shown, but it is generally derived from and established by all the facts and circumstances attending the doing of the act complained of, as disclosed by the evidence, and in order for you to determine in this case, the question of the intent,—the intent with which one of the overt acts was performed, for instance,—you may look to all the evidence in the case. There must be an intentional participation in the transaction or transactions, or some of them, with a view to furthering the common design and purpose. If persons work together, though performing separate acts, to advance an unlawful scheme, having its promotion in view and actuated by the common purpose of accomplishing the unlawful end, they are conspirators.

You have already gathered from what I have said, Gentlemen, that where several parties conspire or combine together in a conspiracy, each is criminally responsible for any act of his associate or associates done to effect the [173—131] object of the crime. In such cases, in contemplation of law, the act of one is the act of all. That is, of course, limited to the time during the existence of the conspiracy, and I have already charged you that any statement made by one of the defendants, in the absence of the other defendant, after the ter-

mination of the conspiracy, was not evidence against the absent defendant nor is it evidence against the defendant who made the statement as to the formation of the conspiracy, but as admissions against interest, tending to establish, tending to throw light upon what acts were done and the effect of such acts during the period of the conspiracy.

One person alone cannot be convicted of a conspiracy. Two may be. One may, provided that another or others are shown to be guilty with him, although not at the time on trial. In other words, in this case, if you come to the conclusion that only one of the defendants conspired with one of the absent defendants, or one of the persons whose names are unknown to the Grand Jurors, you can convict the one defendant and acquit the other; but if you believe that they conspired between themselves and any of the other persons mentioned and referred to and believe that beyond a reasonable doubt, you can return a verdict of guilty as to both.

The adequacy of the evidence in prosecutions for criminal conspiracy, to prove the existence of such a conspiracy, like other questions of the weight of evidence, is a question for the jury.

One may join a conspiracy either at the time it is formed or thereafter, and he may join it by acts or words. One may unlawfully join a conspiracy even though he does not know all his co-conspirators, and if one knowingly and unlawfully joins a conspiracy which has already been formed by others, knowing the objects thereof, he thereby adopts all the acts and declarations of his co-con-

spirators done or made for the purpose of accomplishing the object of the conspiracy, whether they are so done or after he so joins the conspiracy. And of course, as I have said before, when the joint enterprise is at an end, [174—132] whether by accomplishment, or by abandonment, no one of those engaged therein may, by any subsequent acts or declaration affect the others.

The charge of conspiracy is limited by the terms of the indictment itself. The indictment here charges but one combination or conspiracy, however diverse its objects, and no defendant could be convicted thereunder unless he was shown to be a member of or party of that conspiracy.

Furthermore, the scope of a conspiracy must be gathered from the testimony and not from the averments of the indictment. The latter may limit the scope, but cannot extend it.

It is claimed by the defendants on trial in this case that there was no conspiracy at any time. This presents a question of fact for you to determine.

The granting or refusing to grant motions to dismiss as to any of the defendants in this case, must not be taken by the jury as indicating in any way the opinion of the Court as to the guilt or innocence of any of the defendants now on trial, and you should entirely disregard the same in arriving at your verdict. Each defendant has the right to have the evidence separately considered and applied to him.

The indictment is a mere formal accusation against the defendants. It is no evidence of their guilt. It does not impair the presumption of innocence and no juror should permit himself to be influenced against the defendants because of or on account of said indictment.

In order to convict the defendants, or either of them, of the crime charged in the indictment, it is incumbent upon the United States to satisfy you beyond a reasonable doubt of the truth of every material allegation of the indictment. The law raises no presumption against the defendants, but every presumption of the law is in favor of their innocence. This presumption of innocence continues throughout the trial and until such time, if there be such a time, as the jury finds that they have been proven guilty, beyond a reasonable doubt. When that time arrives in the case, if it does arrive, then that presumption of innocence no longer prevails. [175—133]

Any Yaqui Indians participating with the defendant Gandara in any arrangement for furnishing arms or munitions if such was in violation of the laws of the United States, would be what in law is termed an accomplice. If any of the witnesses testifying for the Government are of that class, they are accomplices. The testimony of an accomplice, while admissible and to be considered by the jury for whatever they may think it worth, if anything, should not under ordinary circumstances be the sole basis of a conviction, by the jury, before con-

victing upon the uncorroborated testimony of accomplices, should consider very carefully the testimony of such accomplices and not convict on such testimony unless they are thoroughly satisfied beyond a reasonable doubt of the truth of such testimony.

As I stated before, before you can find the defendants, or either of them, guilty, you must find their or his guilt beyond a reasonable doubt. A reasonable doubt, as applied to evidence in criminal cases, is such a doubt as you may entertain as reasonable men, after a thorough review and consideration of all the evidence, a doubt for which a reason arising from the evidence, or the want of evidence, exists. It is not a mere possibility of a doubt, an imaginary doubt, but a serious, substantial, well-founded doubt, growing out of the evidence, or the want of it, in the case. While it is true that the Government is required to prove the guilt of the defendant or defendants beyond a reasonable doubt, it is not required to prove his or their guilt to a mathematical certainty. Such a thing as mathematical certainty cannot exist in the enforcement of law. Proof of this character is rarely obtainable in human investigations. All that courts and juries can act upon is belief to a moral certainty. It has been said that everything relating to human affairs and depending upon mortal testimony is open to some possible or imaginary doubt.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which

juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eye-witness to the transaction or the commission of the crime, and the other is proof by testimony of [176—134] a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant and which is known as circumstantial evidence. Such evidence may consist of plans laid for the commission of the crime, or any other acts, declarations or circumstances admitted in evidence, tending to connect the defendant or defendants with the commission of the crime. Circumstantial evidence is proof of certain facts and circumstances in any certain case, from which the jury may infer other and connected facts, which usually and reasonably follow according to the common experience of mankind.

Crime may be proved by circumstantial evidence as well as by direct testimony of eye-witnesses; but the facts and circumstances in evidence should be consistent with each other and with the guilt of the defendant, and wholly inconsistent with any reasonable theory of the defendant's innocence. In circumstantial evidence it is not necessary that each circumstance relied upon be proved by the same weight and force of evidence, and be as convincing in its conclusiveness of guilt as though it were the main issue in the case, but the circumstances may be combined together and thereby give strength to each other. As to the weight and sufficiency of such evidence, that is a matter for the jury to determine.

I charge you, Gentlemen, that you are made by law the sole judges of the facts in this case and of the credibility of each and all of the witnesses who have testified before you, and of the weight you will give to the testimony of the several witnesses who have testified in the case.

In determining the credibility of any witness and the weight you will give to his testimony, you have the right to take into consideration his manner and appearance while giving his testimony, his means of knowledge, any interest or motive which he may have in the result of the case, if any be shown, and the probability or improbability of the truth of his statement, when considered in connection with all the other facts and circumstances in the case. If you believe any witness has wilfully sworn falsely as to any material fact [177—135] in the case, then you have the right to entirely disregard the testimony of such witness, except in so far as his statements may be corroborated by other credible evidence in the case and by the facts and circumstances in evidence.

The law permits the defendants, at their own request, to testify in their own defense. The defendants herein have availed themselves of this right. Their testimony is before you, and should be considered as the testimony of any other witness, taking into consideration the fact that they are the defendants and are interested in the result of this trial, and, if convicted, will be required to suffer whatever punishment the court may under the circumstances of the case, feel constrained to impose.

They should not, however, be disbelieved merely because they are the defendants, and interested.

You will consider all of the testimony, look at it from a reasonable standpoint, and take into consideration all the facts and determine what credit should be given to the testimony of the several witnesses. It is for you to determine whether any of them have wilfully sworn falsely, or whether they have withheld the facts, or perverted the facts and, if so, their motive or purpose in so doing.

I wish to further say that no opinion expressed by the Court, or comment made by the Court, if it carries with it an opinion regarding the facts, should be given any consideration by the jury in determining what the facts are, for you and you alone are the sole judges of the facts. The Court instructs you as to the law and it is your duty to follow the instructions of the Court, but the Court expresses no opinions as to the facts. You must find the facts for yourselves.

I now submit the case to you, Gentlemen, reminding you of its importance. If the evidence of the defendants' guilt is not entirely clear, then they should certainly be acquitted, and if it is entirely clear, they should certainly be convicted. No sympathy or prejudice must be allowed to influence you in passing on this case. You will render your verdict of guilty or not guilty and let the consequences be what they may. You are concerned only in the proper enforcement of the law and protecting those who are on trial. [178—136]

BE IT REMEMBERED that during the trial of this cause further proceedings were had as follows:

The COURT.—Any exceptions to the charge?

Mr. HILZINGER.—You asked us to call your attention with reference to Mr. Borgaro in the course of his business as a merchant, making sale.

The COURT.—I omitted that, but I had made a note of it. Gentlemen of the Jury, it is not a crime for anyone to sell, in the United States, rifles or ammunition in the ordinary course of business. Whether the sales made by the defendant Borgaro were in the ordinary course of business is for the determination of the jury, from all of the evidence, direct and circumstantial.

The COURT.—Any exceptions?

Mr. BARRY.—If your Honor please, I understand that the requested instruction Number One, which we asked be given with reference to the law as based on the Trumbull case, has not been given, and we except to the refusal to give that instruction.

The COURT.—You may have that exception.

Mr. RICHEY.—Does that include each of the defendants?

The COURT.—It does.

The COURT.—Gentlemen, four forms of verdict have been prepared. If you find the defendant Esteban Borgaro, Jr., guilty, you will use this form of verdict,—“We, the jury, duly empaneled and sworn in the above entitled action, on our

oaths do find the defendant guilty in the manner and form as charged in the indictment.”

If you do not believe that his guilt has been established beyond a reasonable doubt, the form of your verdict will be,—“We, the jury, duly empaneled and sworn in the above-entitled action, upon our oaths do find the defendant not guilty.”

Similar forms of verdict will be furnished you for the defendant Gandara.

You will cause your verdict to be signed by your foreman, whom you will select upon going into your room, and of course you understand, in criminal cases, all verdicts must be unanimous. I will now give you the indictment [179—137] and also the forms of verdict, which you will take to the jury-room, and you will occupy the room to the right side, which has been provided for you.

You will also as a matter of form sign a verdict of not guilty as to the defendant Navarette, the Court having determined that the evidence against him is not sufficient to establish his guilt as a conspirator.

* * * * *

Thereupon the jury retired in custody of the marshal to consider their verdict, and subsequently returned into court, and returned the verdict shown in the transcript herein, to which reference is made.

* * * * *

BE IT REMEMBERED, that the above and foregoing sets out truly and correctly all of the evidence introduced upon the trial of this cause, and

truly and correctly sets out the matters and things and proceedings involved in this cause, and the defendant respectfully prays that this his bill of exceptions be by the Court settled, allowed, approved, signed and ordered filed, and made a part of the record herein.

JAMES D. BARRY,
W. H. FRYER,
Attorneys for Defendant. [180—138]

CERTIFICATE OF JUDGE TO BILL OF EX-
CEPTIONS.

On this 27 day of April, A. D. 1928, the above and foregoing bill of exceptions having been presented to me, and having been by me found to be correct, it is hereby in all respects settled, approved, allowed, signed and ordered filed and made a part of the record in this cause.

WM. H. SAWTELLE,
United States District Judge for the District of
Arizona.

[Indorsements]: Filed Apr. 27, 1928. [181—
139]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court
for the District of Arizona.

You will please prepare a transcript of the record in the above-entitled cause to be filed in the

office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the writ of error of said Court in said cause, and include in said transcript the following proceedings, pleadings, papers, records and files, to wit:

Indictment;

Transcript of minute entries;

Bill of exceptions, including charge of Court to jury;

Defendant's special requested instruction, No. 1;

Verdict of jury;

Judgment and sentence;

Assignments of error;

Petition for writ of error;

Order allowing writ of error;

Writ of error bond or cost bond;

Order fixing amount of bail bond;

Appearance bond on writ of error;

Writ of error;

Citation;

Praecipe for transcript of record; [182]

Stipulations for extension of time to file bill of exceptions;

Orders extending time to file bill of exceptions;

Stipulations for extension of time for filing record and docketing cause in the Circuit Court of Appeals;

Orders extending time for filing record and docketing cause in the Circuit Court of Appeals

—and all other records, entries, pleadings, proceedings, papers and filings necessary or proper to

make a complete record upon said writ of error in said cause.

JAMES D. BARRY,
W. H. FRYER,
Attorneys for Defendant.

Service of a copy of the foregoing praecipe is hereby admitted this 23 day of April, 1928.

CLARENCE V. PERRIN,
Assistant U. S. District Attorney.

[Indorsements]: Filed Apr. 23, 1928. [183]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said court, including the records, papers and files in the case of the United States of America, Plaintiff, *versus* Jose Gandara, Defendant, No. C.—3446 (Tucson).

I further certify that the attached pages, numbered one to one hundred and eighty-three, inclusive, contain a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the indorsements of filing thereon, called for and designated in the

praecipe filed in said case and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in the city of Tucson, State and District aforesaid.

I further certify that the Clerk's fee for preparing, and certifying to, this said transcript amounts to the sum of Thirty-eight and 20/100 (\$38.20) Dollars, and that said sum has been paid to me by counsel for the defendants.

I further certify that the original writ of error and citation issued in said cause, together with the original orders made and signed by the Judge of said court enlarging the time to docket this case with the United States Circuit Court of Appeals, Ninth Circuit, from January 2, 1928, until May 10, 1928, are hereto attached and made a part of this record.

WITNESS my hand and the seal of said court, this 30th day of April, A. D. 1928.

C. R. McFALL.

[Seal]

C. R. McFALL,

Clerk United States District Court for the District of Arizona.

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING FEBRUARY 1, 1928, TO FILE RECORD AND DOCKET CAUSE.

Upon motion of counsel for the defendant, Jose Gandara, and for good cause shown,—

IT IS ORDERED by the Court that the time for filing the record of said cause and docketing the same in the Circuit Court of Appeals of the Ninth Circuit be, and it is hereby, extended to and including the 1st day of February, 1928.

Dated at Tucson, Arizona, this 30th day of December, 1927.

WM. H. SAWTELLE,
Judge of Said Court.

[Endorsed]: Filed Dec. 30, 1927.

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MARCH 1, 1928, TO FILE RECORD AND DOCKET CAUSE.

Upon motion of counsel for the defendant, Jose Gandara, and for good cause shown,—

IT IS ORDERED by the Court that the time for filing the record of said cause and docketing the same in the Circuit Court of Appeals of the Ninth Circuit be, and it is hereby, extended to and including the 1st day of March, 1928.

Dated at Tucson, Arizona, this 14th day of January, 1928.

WM. H. SAWTELLE,
Judge of Said Court.

[Endorsed]: Filed Jan. 14, 1928.

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MARCH 31, 1928, TO FILE RECORD AND DOCKET CAUSE.

Upon motion of counsel for the respective parties above named, and for good cause shown,—

IT IS ORDERED by the Court that the time for filing the record of said cause and docketing the same in the Circuit Court of Appeals of the Ninth Circuit be, and it is hereby, extended to and including the 31st day of March, 1928.

Done at Tucson, Arizona, this 29th day of February, 1928.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

[Endorsed]: Filed Feb. 29, 1928.

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MAY 1, 1928, TO FILE RECORD AND DOCKET CAUSE.

Upon motion of counsel for the respective parties above named, and for good cause shown,—

IT IS ORDERED by the Court that the time for filing the record of said cause and docketing the same in the Circuit Court of Appeals of the

Ninth Circuit be, and it is hereby, extended to and including the 1st day of May, 1928.

Done at Tucson, Arizona, this 4th day of April, 1928.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

[Endorsed]: Filed Apr. 4, 1928.

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MAY 10, 1928, TO FILE RECORD AND DOCKET CAUSE.

Upon motion of counsel for the respective parties above named, and for good cause shown,—

IT IS ORDERED by the Court that the time for filing the record of said cause and docketing the same in the Circuit Court of Appeals of the Ninth Circuit be, and is hereby, extended to and including the 10th day of May, 1928.

Done at Tucson, Arizona, this 30th day of April, A. D. 1928.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

[Endorsed]: Filed Apr. 30, 1928.

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

The President of the United States, to the United States of America, Defendant in Error,
GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error sued out and filed in the office of the Clerk of the District Court of the United States for the District of Arizona, in the cause wherein Jose Gandara is plaintiff in error and the United States is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 3d day of December, in the year of our Lord one thousand nine hundred and twenty-seven.

WM. H. SAWTELLE,
United States District Judge.

[Seal]

Attest: C. R. McFALL.

Clerk of the United States District Judge.

I hereby, this the 3d day of December, A. D. 1927, accept due personal service of the foregoing cita-

tion, on behalf of the United States of America, defendant in error.

United States Attorney for the District of Arizona.

CLARENCE V. PERRIN,
Assistant United States Attorney.

[Endorsed]: Filed Dec. 3, 1927.

United States Circuit Court of Appeals for the Ninth Circuit.

The United States of America,
Ninth Judicial Circuit,—ss.

WRIT OF ERROR.

The President of the United States, to the Honorable Judge of the District Court of the United States, for the District of Arizona, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the United States, before you, or some of you, between Jose Gandara, plaintiff in error, and the United States of America, defendant in error, manifest error hath happened, to the great damage of the said Jose Gandara, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judg-

ment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said United States Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 3d day of December, in the year of our Lord one thousand nine hundred and twenty-seven.

[Seal] C. R. McFALL,
Clerk of the District Court of the United States,
for the District of Arizona.

Allowed this the 3d day of December, A. D. 1927.

WM. H. SAWTELLE,
U. S. District Judge.

The answer of the Judge of the District Court of the United States for the District of Arizona, to the within writ of error:

As within commanded, I certify under the seal of my said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaintiff whereof mention is made within,

with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained.

By the Court.

C. R. McFALL.

[Seal]

C. R. McFALL,

Clerk U. S. District Court for the District of Arizona.

[Endorsed]: Filed Dec. 3, 1927.

[Endorsed]: No. 5483. United States Circuit Court of Appeals for the Ninth Circuit. Jose Gandara, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Filed May 3, 1928.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

